

11-28-2012

Wade v. Taylor Clerk's Record Dckt. 40142

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LAW CLERK

Vol. 1 of 3

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

JAMEE L. WADE,

Plaintiff-Respondent,

-VS-

**BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY,
CANYON COUNTY PROSECUTING
ATTORNEY'S OFFICE, a public agency,**

Defendants-Appellants.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

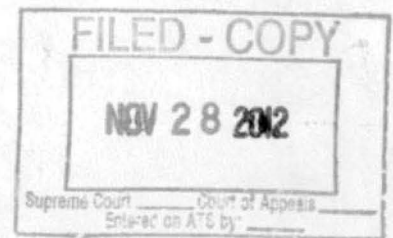
Honorable RENAE J. HOFF, District Judge
Honorable THOMAS J. RYAN, District Judge

Bryan F. Taylor and Michael K. Porter
Canyon County Prosecutors Office

Attorneys for Appellants

Ronaido A. Coulter
Camacho Mendoza Coulter Law Group

Attorney for Respondent



410142

IN THE SUPREME COURT OF THE
STATE OF IDAHO

JAMEE L. WADE,)	
)	
Plaintiff-Respondent,)	
)	Supreme Court No. 40142-2012
-vs-)	
)	
BRYAN F. TAYLOR, COUNTY)	
PROSECUTING ATTORNEY, CANYON)	
COUNTY PROSECUTING ATTORNEY'S)	
OFFICE, a public agency,)	
)	
Defendants-Appellants.)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE RENAE J. HOFF, Presiding
HONORABLE THOMAS J. RYAN, Presiding

Bryan F. Taylor and Michael K. Porter, Canyon County Prosecutor's Office,
1115 Albany St., Caldwell, ID 83605

Attorneys for Appellants

Ronaldo A. Coulter, Camacho Mendoza Coulter Law Group,
776 E. Riverside Dr., Ste. 240, Eagle, ID 83616

Attorneys for Respondent

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Date: 10/19/2012

Time: 04:15 PM

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Third Judicial District Court - Canyon County

ROA Report

User: RANDALL

Case: CV-2012-0003744-C Current Judge: Renae J. Hoff

Jamee L Wade vs. Bryan F Taylor, etal.

Jamee L Wade vs. Bryan F Taylor, Canyon County Prosecuting Attorney

Other Claims

Date		Judge
4/19/2012	New Case Filed-Other Claims	Renae J. Hoff
	Summons Issued	Renae J. Hoff
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Coulter, Ronaldo A (attorney for Wade, Jamee L) Receipt number: 0025672 Dated: 4/19/2012 Amount: \$88.00 (Check) For: Wade, Jamee L (plaintiff)	Renae J. Hoff
4/20/2012	Affidavit of Ronaldo A Coulter (fax)	Renae J. Hoff
4/25/2012	Notice Of Hearing 5-4-12 (fax)	Renae J. Hoff
	Hearing Scheduled (Motion Hearing 05/04/2012 10:30 AM) Expedited hearing Access to Public Records	Renae J. Hoff
4/27/2012	Respondent's Answer to Petitioner's Petition for Access to Public Records	Renae J. Hoff
5/2/2012	Motion to Shorten Time and Notice of Hearing (5/4/12 @ 10:30 a.m.)	Renae J. Hoff
5/4/2012	Hearing result for Motion Hearing scheduled on 05/04/2012 10:30 AM: District Court Hearing Held Court Reporter: Debora Kreidler Number of Transcript Pages for this hearing estimated: Less than 100	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 05/04/2012 10:30 AM: Hearing Held Expedited hearing Access to Public Records & Motion to Shorten Time	Thomas J Ryan
	Hearing Scheduled (Conference - Status 05/17/2012 02:30 PM)	Thomas J Ryan
5/7/2012	Hearing Scheduled (Conference - Status 05/17/2012 11:00 AM) RE: Expedited hearing Access to Public Records & Motion to Shorten Time	Thomas J Ryan
	Amended Notice Of Hearing 5-17-12	Renae J. Hoff
5/17/2012	Hearing result for Motion Hearing scheduled on 05/17/2012 11:00 AM: Hearing Held Cont-RE: Expedited hearing Access to Public Records	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 05/17/2012 11:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
6/5/2012	Memorandum Decision on Petition for Access to Public Records- Granted	Thomas J Ryan
	Civil Disposition entered for: Canyon County Prosecuting Attorney, Defendant; Taylor, Bryan F, Defendant; Wade, Jamee L, Plaintiff. Filing date: 6/5/2012	Thomas J Ryan
	Case Status Changed: Closed	Renae J. Hoff
6/6/2012	Motion to Alter or Amend Judgment	Renae J. Hoff
6/12/2012	Memorandum in Support of Motion to Alter or Amend Judgment	Renae J. Hoff
6/13/2012	Motion to Stay Proceeding Pending Decision on Motion to Alter or Amend Judgment	Renae J. Hoff
6/14/2012	Order to Stay Proceedings Pending Decision on Motion to Alter or Amend Judgment	Thomas J Ryan
	Notice Of Hearing (6/28/12 at 10:00am)	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 06/28/2012 10:00 AM) Resp motn to alter or amend	Thomas J Ryan
	Case Status Changed: Closed pending clerk action	Renae J. Hoff

000001

Jamee L Wade vs. Bryan F Taylor, etal.

Jamee L Wade vs. Bryan F Taylor, Canyon County Prosecuting Attorney

Other Claims

Date		Judge
6/19/2012	Petitioner's Response to Respondent's motion to Alter or Amend Judgment	Renae J. Hoff
6/28/2012	Hearing result for Motion Hearing scheduled on 06/28/2012 10:00 AM: Hearing Held Resp motn to alter or amend	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 06/28/2012 10:00 AM: Motion Granted Resp motn to alter or amend	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 06/28/2012 10:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
6/29/2012	Memorandum Decision & order Upon Motion to Alter or Amend Judgment	Renae J. Hoff
7/11/2012	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Canyon County Prosecuting Attorney (defendant) Receipt number: 0043345 Dated: 7/12/2012 Amount: \$.00 (Cash) For: Canyon County Prosecuting Attorney (defendant) and Taylor, Bryan F (defendant)	Renae J. Hoff
	Appealed To The Supreme Court	Renae J. Hoff
	Notice of Appeal	Renae J. Hoff
	Motion to Stay Memorandum Decision and Order Pending Appeal	Renae J. Hoff
7/20/2012	Rule 54 (A) Judgment	Thomas J Ryan
	Order to Stay Memorandum Decision and Order Pending Appeal	Thomas J Ryan
7/23/2012	S C - Order to Remand to the District Court and Suspend Appellate Proceedings	Renae J. Hoff
7/30/2012	Motion to Stay Proceedings Rule 54 (a) Judgment	Renae J. Hoff
8/3/2012	Motion to Alter or Amend Judgment (fax	Renae J. Hoff
8/6/2012	Notice Of Hearing 9-20-12 (fax	Renae J. Hoff
	Hearing Scheduled (Motion Hearing 09/20/2012 09:00 AM) Petn Mo Alter or amend	Renae J. Hoff
	Memorandum in Support of Petitioner's Motion to Alter or Amend Judgment	Renae J. Hoff
	Affidavit in Support of Memorandum in Support of Petitioner's Motion to Alter or Amend Judgment	Renae J. Hoff
9/20/2012	Hearing result for Motion Hearing scheduled on 09/20/2012 09:00 AM: Hearing Held Petn Mo Alter or amend	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 09/20/2012 09:00 AM: Motion Granted Petn Mo Alter or amend	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 09/20/2012 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
10/5/2012	Rule 54 (a) Judgment of July 20, 2012 (Amended	Renae J. Hoff

000002

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Telephone: (208) 672-6112
Facsimile: (208) 672-6114
Idaho State Bar No. 3850
ron@cmclawgroup.com

APR 19 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

Attorney for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

)
)
)
) Case No.: CV12-3744C
)
)
) PETITION FOR ACCESS TO
) PUBLIC RECORDS
)
) [REQUEST FOR EXPEDITED
) HEARING PURSUANT TO I.C.
) § 9-343]
)
) Fee: \$88.00
)
)
)

COMES NOW the Petitioner, Jamee L. Wade (hereinafter "Mr. Wade" or "Jamee") by and through his attorney of record, Ronaldo A. Coulter, and hereby files this Petition for Access to Public Records pursuant to Idaho Code § 9-343(1), and alleges against Respondent, Bryan F. Taylor, and Canyon County Prosecuting Attorney (hereinafter "Mr. Taylor") as follows:

ORIGINAL

BACKGROUND

On December 22, 2011, Mr. Wade was shot twice and injured by a city of Fruitland Police Officer. As a result of the Fruitland Police Officer's actions in applying deadly force, Mr. Wade has suffered both physically and mentally. Per I.C. § 6-906 of the Idaho Tort Claims Act (ITCA), Mr. Wade must file a tort claim on or before June 19, 2012. The purpose of the ITCA is to provide "much needed relief to those suffering injury from the negligence of government employees."

Stoddart v. Pocatello School Dist. #??25, 149 Idaho 679, 683, (Idaho,2010) (citations omitted)

Another purpose of the ITCA is to provide notice to the government entity to:

(1) save needless expense and litigation by providing opportunity for amicable resolution of differences among parties,

(2) allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the state's liability, if any, and

(3) allow the state to prepare defenses. *Pounds v. Denison*, 120 Idaho 425, 426-27, 816 P.2d 982, 983-84 (1991).

Driggers v. Grafe, 148 Idaho 295, 297, (Idaho App.,2009)

Mr. Wade seeks information in order to submit a claim that will provide sufficient notice to the government entity(ies) involved to meet the three objectives of the notice requirement. The Idaho State Police, the Fruitland Police Department, and the Payette County Sheriff's Department have all completed their investigations and these investigations have been submitted to the Canyon County Prosecutor's Office. Mr. Wade seeks these completed investigations and/or reports because they contain information that will allow him to prepare a comprehensive tort claim. On March 22, 2012, per I.C. §§ 9-337 through 9-347, Mr. Wade, through counsel, requested copies of the completed Idaho State Police, Fruitland Police Department, and Payette County Sheriff's Department investigations into the officer shooting of Mr. Jamee Wade. The Canyon County Prosecutor's Office denied Mr. Wade's request relying on I.C. §9-335. Mr. Wade is not seeking any

information from an on-going investigation that the Canyon County Prosecutor may be undertaking. Mr. Wade seeks copies of the completed law enforcement investigations that are in the possession of the Canyon County Prosecutor's Office.

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction over the above-entitled matter pursuant to I.C. § 9-343.
2. This court has personal jurisdiction over the above named parties pursuant to I.C. § 9-343(1).
3. Canyon County is the County of proper venue in this matter pursuant to I.C. § 9 - 343(1), as the records that are subject to this action are located in Canyon County, Idaho.

PARTIES

4. On December 22, 2011, Jamee L. Wade, a male resident of Payette County, suffered two gunshot wounds at the hands of the Fruitland Police Department. Jamee was taken to St. Alphonsus Medical Center in Boise, Idaho that evening. As a result of the shooting, Jamee Wade has suffered both physical and mental injuries.

5. Bryan F. Taylor is the Canyon County Prosecuting Attorney and is head of the Canyon County Prosecuting Attorney's Office located at the Canyon County Courthouse, 1115 Albany Street, Caldwell, ID 83605.

STATEMENT OF FACTS

7. On March 13, 2012, Mr. Wade, through counsel submitted a public writings request to the Idaho State Police seeking the following information:

- a. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Idaho State Police regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.
- b. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Fruitland Police Department, Fruitland, Idaho regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m. (Exhibit "A")

8. On March 15, 2012, the Idaho State Police denied the request citing I.C. §§ 9-335(1), 9-337(6) and 9-340B(1); however, the Idaho State Police advised Mr. Wade through counsel that a request could be made to the Payette County Prosecuting Attorney's Office. (Exhibit "B")

9. On March 22, 2012, Mr. Wade, through counsel submitted a public writings request to the Payette County Prosecuting Attorney's Office making the same request that was made to the Idaho State Police as delineated in ¶ 7 herein. (Exhibit "C")

10. On March 22, 2012, Mr. Wade, through counsel received a reply denying Mr. Wade's public writings request citing I.C. §§ 9-335(1)(1) [sic] and (e). However, the Payette County Prosecutor further added the following:

- a. I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. ***Upon completion of the Idaho State Police Investigation, all materials were forwarded to the Canyon County Prosecutor's Office for Review.*** I'm enclosing the letter sent to Canyon County (Emphasis added) (Exhibit "D")

11. On March 22, 2011, immediately after receipt of the Payette County Prosecutor's response to Mr. Wade's public writings request, Mr. Wade, through counsel sent a public writings request to the Canyon County Prosecutor's Office. This request sought the same information that is delineated in ¶ 7 herein but added another request as follows:

- a. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Payette County Sheriff's Office regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m. (Exhibit "E")

12. Significantly the request to the Canyon County Prosecutor contained the following language:

This request is being sent to you based upon the denial of my public writings request filed with the Payette County Prosecuting Attorney. The Payette County Prosecuting Attorney has informed me that all materials were forwarded to your office. Specifically, Ms. Kelso stated the following:

I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. ***Upon completion of the Idaho State Police Investigation, all materials were forwarded to the Canyon County Prosecutor's Office for Review.*** I'm enclosing the letter sent to Canyon County (Emphasis added)

It is my understanding that the investigative effort of the lead investigative agency (the Idaho State Police) has been completed; *see* the enclosure to this correspondence. It is also my understanding that both the Fruitland Police Department's and the Payette County Sheriff's Office have been completed in this matter. Therefore, the exemption under I.C. 9-335(1) and 9-340B are inapplicable as providing the requested completed investigations would not:

- Interfere with an enforcement proceeding;
 - Deprive, my client or the un-named officer of a fair trial;
 - Constitute an unwarranted invasion of personal privacy;
 - Disclose the identity of a confidential source; nor the information provided by a confidential source;
 - Disclose investigative techniques and procedures; nor
 - Endanger the life or physical safety of law enforcement personnel.
- (Exhibit "E")

13. On March 30, 2012, Mr. Wade's public writings request was denied by Mr. Michael K. Porter, Deputy Prosecuting Attorney Canyon County who relied on I.C. § 9-335 without addressing the rationale provided by Mr. Wade, through counsel as delineated in ¶ 12 herein. (Exhibit "F")

CAUSE OF ACTION – PUBLIC RECORDS ACT

Pursuant to Idaho Code §§ 9-337 *et seq.*, the writings requested by Mr. Jamee Wade are public records. Pursuant to Idaho Code § 9-338, Mr. Jamee Wade has a right to examine and take a copy of such records unless access to such records are expressly prohibited by statute. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 461, 915 P.2d 21, 23 (Idaho, 1996).

Although the denial of Mr. Jamee Wade's request cited Idaho Code § 9-335, this section is inapplicable in this instance. All of the subject investigations have been completed and are under review by the Canyon County Prosecutor. A review of other agencies' investigations, upon which the Canyon County Prosecutor may or may not make a decision, does not make the subject investigations completed by the Idaho State Police, the Fruitland Police Department, and the Payette County Sheriff's Office any less complete. Further, and as delineated herein in ¶ 12, the exemptions under I.C. 9-335(1) and 9-340B are inapplicable as providing the requested completed investigations would not:

- Interfere with an enforcement proceeding;
- Deprive, Mr. Jamee L. Wade or the un-named officer of a fair trial;
- Constitute an unwarranted invasion of personal privacy;
- Disclose the identity of a confidential source; nor the information provided by a confidential source;
- Disclose investigative techniques and procedures; nor
- Endanger the life or physical safety of law enforcement personnel.

As the facts and exhibits delineated herein show, Petitioner's request is in no way an attempt to supplement, augment, substitute, or supplant discovery procedures in a civil or administrative proceeding, and thus this request falls within the permissible scope of the Idaho Public Records Act. Therefore, the Canyon County Prosecutor's denial is not supported by Idaho Code § 9-343(3); and Mr. Jamee Wade is entitled to examine and make a copy of the requested

records. In addition to or in the alternative to the rationale provided above, Idaho Code § 9-342(1) reads: "A person may inspect and copy the records of a public agency pertaining to that person, even if the record is otherwise exempt from public disclosure." Therefore, Mr. Jamee Wade has a right under Idaho Code to examine and make a copy of the subject requested records that were denied by the Canyon County Prosecutor. Further, it is critical to note that Idaho Code §§ 9-342(3)(a) and 9-342(3)(b) are inapplicable as the documents requested unequivocally refer to completed investigations and associated public writings and not an on-going investigation.

REQUEST FOR EXPEDITED RESPONSE AND/OR HEARING

Under Idaho Code § 9-343, the Court shall set a time for responsive pleading and/or hearing in an action for review of the denial of a request to inspect and/or copy a public record "at the earliest possible time" and in no event beyond 28 calendar days from the date of filing the Petition. Mr. Jamee Wade respectfully seeks such expedited proceedings from the Court in this instance.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays for relief as follows:

1. For the Court's order setting a time for a responsive pleading from the Canyon County Prosecuting Attorney's Office "at the earliest possible time";
2. For the Court's order setting a time for a hearing in this action in no event beyond 28 calendar days from the date of the filing of this Petition, as required by I.C. § 9-343;
3. For the Court's order requiring the Canyon County Prosecutor's Office to make available for inspection and copying the documents requested in Exhibit "E";

4. For the Court's order requiring the Canyon County Prosecutor's Office to pay the Petitioner's costs and attorneys' fees pursuant to Idaho Code § 9-344 and other applicable statutory or rules; and

5. For the petitioner to be awarded all other equitable or legal relief as this Court may deem just and proper.

DATED this 19th day of April, 2012.

CAMACHO MENDOZA COULTER LAW GROUP



R.A. (RON) COULTER
Attorney for Petitioner

Exhibit A

Idaho State Police Public Record Request



PUBLIC RECORD REQUEST

Idaho State Police
700 S. Stratford
Meridian ID 83642

In order to best serve the public and to process your request for public records as expeditiously as possible, all requests to examine or copy public records **MUST BE MADE IN WRITING**. Please help us in this process by filling out this form completely. Be sure to print your name (optional), address and telephone number so that we may respond to this request.

DATE: March 13, 2012

I request to: ☐ Examine ☒ Copy

TO: Records Custodian, Idaho State Police

ALL COPIES MADE ARE SUBJECT TO A COPYING COST WHICH MAY BE REQUIRED PRIOR TO RECEIPT OF RECORD(S).

PLEASE DESCRIBE THE RECORD(S) YOU ARE REQUESTING FULLY, USING RELEVANT DATES, LOCATION, NAMES OR DATE OF BIRTH, INCIDENT, ETC., TO ASSIST THE AGENCY IN RESPONDING

RECORDS REQUESTED

See attached Public Writings Request

(THE RECORDS CUSTODIAN WILL MAIL THE RESPONSE TO THE NAME AND ADDRESS GIVEN BELOW)

Name: R. A. (Ron) Coulter
Address: 776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616
Day Phone (208) 672 - 6112

We will respond to this request within three (3) business days. Business days are Monday – Friday 8:00 am to 5:00 pm. All requests received after normal business hours (excluding holidays) shall be deemed received the next business day.

<p>Idaho Office 776 E. Riverside Dr Suite 240 Eagle, ID 83616 208.672.6112 Fax: 208.672.6114 www.cmclawgroup.com</p> <p>Maryland Office 7272 Wisconsin Ave Suite 300 Bethesda, MD 20814 301.941.1957 eFax: 240.465.0368 www.cmclawgroup.com</p>	 CAMACHO MENDOZA COULTER ----- LAW GROUP -----	<p>Natalie Camacho Mendoza, ID & TX</p> <p>R. A.(Ron) Coulter LtCol USMC (Ret), ID</p> <p>Robert G. Teffeteller, *Of Counsel, ID & CA</p> <p>Remington J. Johnson, MD</p>
---	--	---

March 13, 2012

Via E-Mail R3info@isp.idaho.gov

Records Custodian
Idaho State Police
700 S. Stratford
Meridian, Idaho 83642

RE: Jamee L. Wade
1147-001
Public Writings Request

Dear Records Custodian:

Per Idaho Code §§ 9-337 through 9-347, I request that the following items be provided to me:

1. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Idaho State Police regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.

It is my understanding that this request must be either granted or denied within three (3) working days of the date of your receiving the request; and, if you determine that more time is needed, it is my understanding that I will be so notified in writing and the documents will be provided to me within ten (10) working days of my request. Per Idaho Code § 9-339(2), it is also my understanding that if I do not hear from you within ten (10) days of this request, then my request will deemed denied and I can appeal the denial. Further, it is my understanding that my request may be granted in part and denied in part depending on Fruitland's interpretation of exemptions provided by law. Yet, it is also my understanding that if my request is granted in part, that I will be notified in writing and provided the statutory authority for the partial denial, my right to appeal this decision and the time period in which I must file my appeal.

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It is preferred that all documents be produced in electronic and searchable format as this would help expedite matters and save on cost of reproduction. Please send all materials to the following address:

Mr. R. A. (Ron) Coulter
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

Your attention to this matter will be greatly appreciated.

Should you have any questions, please feel free to contact me at (208) 672-6112.

Sincerely,



R.A. (Ron) Coulter

RAC/alw
cc: File

000014

Exhibit B

Idaho State Police

Public Record Request Denial



IDAHO STATE POLICE NOTICE OF ACTION ON PUBLIC RECORDS REQUEST

Name of Requestor: Mr. R.A. (Ron) Coulter Date: March 15, 2012
Address of Requestor: 776 E. Riverside Drive, Suite 240, Eagle, Idaho 83616

I. Request Granted

- ☐ The requested record is enclosed.
☐ You may inspect and photocopy the requested records during regular office hours by contacting

Records Custodian/Designee

Title

Telephone Number

II. Request Denied in Part or Denied in its Entirety

Your request has been processed. However, after consultation with legal counsel for the Idaho State Police, your request has been
☐ denied in part; ☒ denied in its entirety pursuant to:

- | | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> Idaho Code 9-335(1) | <input type="checkbox"/> Idaho Code 9-337(15) | <input type="checkbox"/> Idaho Code 9-340C(8) | <input type="checkbox"/> Idaho Code 9-340E (5) |
| <input type="checkbox"/> Idaho Code 9-335(2) | <input type="checkbox"/> Idaho Code 9-340A(1) | <input type="checkbox"/> Idaho Code 9-340C(15) | <input type="checkbox"/> Idaho Code 9-340F(1) |
| <input type="checkbox"/> Idaho Code 9-335(3) | <input checked="" type="checkbox"/> Idaho Code 9-340B(1) | <input type="checkbox"/> Idaho Code 9-340D(1) | <input type="checkbox"/> Idaho Code 9-341 |
| <input checked="" type="checkbox"/> Idaho Code 9-337(6) | <input type="checkbox"/> Idaho Code 9-340B(12) | <input type="checkbox"/> Idaho Code 9-340D(11) | <input type="checkbox"/> Idaho Code 9-342(3) |
| <input type="checkbox"/> Idaho Code 9-337(13) | <input type="checkbox"/> Idaho Code 9-340C(1) | <input type="checkbox"/> Idaho Code 9-340D(15) | <input type="checkbox"/> Idaho Code 9-343(3) |
| <input type="checkbox"/> Idaho Code | <input type="checkbox"/> Idaho Code 9-340C(4) | | |

☒ Other/Explanation

- ☒ Investigation is pending or ongoing.
☐ No record found.
☐ Record not maintained in format requested, contact records custodian for more information.
☐ ISP is not the custodian of this record, contact
☐ ISP cannot inform you when the requested record becomes available, contact records custodian with new request.

☒ You may request these records from the Payette County Prosecuting Attorney's office.

The statutory exemptions cited above are found in Idaho's Public Writings Act and are not a complete listing of all other legal bases or privileges which may also apply.

You have the right to appeal this denial or partial denial of your request by filing a petition in conformance with the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. Your petition must be filed in the 4th Judicial District Court of the State of Idaho within one hundred eighty (180) calendar days of the date of mailing of this notice.

III. Additional Comments: RE: Jamee L. Wade, 1147-001, Case No. M11000195. Request a copy of the investigation reports and all documentary evidence. This is an ongoing investigation and has not been adjudicated.

Sincerely,

E. Laraine McCoy
E. Laraine McCoy, Assistant to the Director

Jennifer Shunk
Deputy Attorney General

RECEIVED

MAR 1 1972

LIBRARY OF THE
U.S. AIR FORCE

000017

Exhibit C

Payette County Prosecutor

Public Record Request

Idaho Office
776 E. Riverside Dr
Suite 240
Eagle, ID 83616
208.672.6112
Fax: 208.672.6114
www.cmclawgroup.com

Maryland Office
7272 Wisconsin Ave
Suite 300
Bethesda, MD 20814
301.941.1957
eFax: 240.465.0368
www.cmclawgroup.com



CAMACHO MENDOZA COULTER
----- LAW GROUP -----

Natalie Camacho Mendoza,
ID & TX

R. A. (Ron) Coulter LtCol
USMC (Ret),
ID

Robert G. Teffeteller,
*Of Counsel,
ID & CA

Remington J. Johnson,
MD

March 22, 2012

Via Facsimile 208-642-6099

Records Custodian
Payette County Prosecutor
1130 3rd Ave North, Room #105
Payette, Idaho 83661

RE: Jamee L. Wade
1147-001
Public Writings Request

Dear Records Custodian:

Per Idaho Code §§ 9-337 through 9-347, I request that the following items be provided to me:

1. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Idaho State Police regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.
2. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Fruitland Police Department regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.

It is my understanding that this request must be either granted or denied within three (3) working days of the date of your receiving the request; and, if you determine that more time is needed, it is my understanding that I will be so notified in writing and the documents will be provided to me within ten (10) working days of my request. Per Idaho Code § 9-339(2), it is also my understanding that if I do not hear from you within ten (10) days of this request, then my request will be deemed denied and I can appeal the denial. Further, it is my understanding that my request may be granted in part and denied in part depending on Fruitland's interpretation of exemptions provided by law. Yet, it is also my understanding that if my request is granted in part, that I will

000019

be notified in writing and provided the statutory authority for the partial denial, my right to appeal this decision and the time period in which I must file my appeal.

It is preferred that all documents be produced in electronic and searchable format as this would help expedite matters and save on cost of reproduction. Please send all materials to the following address:

Mr. R. A. (Ron) Coulter
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

This request is being sent to you as instructed by the Idaho State Police. Your attention to this matter will be greatly appreciated.

Should you have any questions, please feel free to contact me at (208) 672-6112.

Sincerely,



R.A. (Ron) Coulter
Attorney for Mr. Wade

Encl: ISP Notice of Action on Public Records Request

RAC/alw
cc: File

000020



IDAHO STATE POLICE
NOTICE OF ACTION ON PUBLIC RECORDS REQUEST

Name of Requestor: Mr. R.A. (Ron) Coulter Date: March 15, 2012
Address of Requestor: 776 E. Riverside Drive, Suite 240, Eagle, Idaho 83616

I. Request Granted

- ☐ The requested record is enclosed.
☐ You may inspect and photocopy the requested records during regular office hours by contacting

Records Custodian/Designee	Title	Telephone Number
----------------------------	-------	------------------

II. Request Denied in Part or Denied in its Entirety

Your request has been processed. However, after consultation with legal counsel for the Idaho State Police, your request has been
☐ denied in part; ☒ denied in its entirety pursuant to:

- | | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> Idaho Code 9-335(1) | <input type="checkbox"/> Idaho Code 9-337(15) | <input type="checkbox"/> Idaho Code 9-340C(8) | <input type="checkbox"/> Idaho Code 9-340E (5) |
| <input type="checkbox"/> Idaho Code 9-335(2) | <input type="checkbox"/> Idaho Code 9-340A(1) | <input type="checkbox"/> Idaho Code 9-340C(15) | <input type="checkbox"/> Idaho Code 9-340F(1) |
| <input type="checkbox"/> Idaho Code 9-335(3) | <input checked="" type="checkbox"/> Idaho Code 9-340B(1) | <input type="checkbox"/> Idaho Code 9-340D(1) | <input type="checkbox"/> Idaho Code 9-341 |
| <input checked="" type="checkbox"/> Idaho Code 9-337(6) | <input type="checkbox"/> Idaho Code 9-340B(12) | <input type="checkbox"/> Idaho Code 9-340D(11) | <input type="checkbox"/> Idaho Code 9-342(3) |
| <input type="checkbox"/> Idaho Code 9-337(13) | <input type="checkbox"/> Idaho Code 9-340C(1) | <input type="checkbox"/> Idaho Code 9-340D(15) | <input type="checkbox"/> Idaho Code 9-343(3) |
| <input type="checkbox"/> Idaho Code | <input type="checkbox"/> Idaho Code 9-340C(4) | | |

☒ Other/Explanation

- ☒ Investigation is pending or ongoing.
☐ No record found.
☐ Record not maintained in format requested, contact records custodian for more information.
☐ ISP is not the custodian of this record, contact
☐ ISP cannot inform you when the requested record becomes available, contact records custodian with new request.

- ☒ You may request these records from the Payette County Prosecuting Attorney's office.

The statutory exemptions cited above are found in Idaho's Public Writings Act and are not a complete listing of all other legal bases or privileges which may also apply.

You have the right to appeal this denial or partial denial of your request by filing a petition in conformance with the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. Your petition must be filed in the 4th Judicial District Court of the State of Idaho within one hundred eighty (180) calendar days of the date of mailing of this notice.

III. Additional Comments: RE: Jamee L. Wade, 1147-001, Case No. M11000195. Request a copy of the investigation reports and all documentary evidence. This is an ongoing investigation and has not been adjudicated.

Sincerely,

E. Laraine McCoy, Assistant to the Director

Deputy Attorney General

Exhibit D

Payette County Prosecutor
Public Record Request Denial



OFFICE OF THE PROSECUTING ATTORNEY

Anne-Marie Kelso, Prosecutor

1130 Third Avenue North, #105

Payette, ID 83661

VIA FACSIMILE (208) 642-6096 (Telephone) (208) 642-6099 (Facsimile)
(208) 672-6114

Barbara Richart

Chief

Deputy Prosecutor

Jennifer M. Carlquist

Deputy Prosecutor

Lisa Salto

Legal Assistant

Wendy L. Grigsby

Legal Assistant

Carrie Sundvall

Victim/Witness

Coordinator

Ron Coulter

Camacho Mendoza Coulter

776 E. Riverside Drive, Suite 240

Eagle, ID 83616

Re: Public Records Request (Jamee L. Wade)

Dear Mr. Coulter:

I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. Upon completion of the Idaho State Police investigation, all materials were forwarded to the Canyon County Prosecutor's Office for review. I am enclosing the letter sent to Canyon County.

Although you did not request documents regarding the investigation done by the Payette County Sheriff's Office, I believe it was your intent to include all reports. Please note that although I am not the custodian of records for the Sheriff's Department, I do have access to reports. Deputies from the Payette County Sheriff's Office documented events occurring on December 22, 2011. However, since Canyon County is still reviewing the decision, additional evidence may be sought by Canyon County and/or additional interviews requested.

Therefore, based on the foregoing, I am declining your request for the following reasons:

1. I do not possess the documents specifically requested
2. The Payette County Sheriff's Office documents are exempt from disclosure at that this time pursuant to Idaho Code Section 9-335(1)(1) and (e).

Thank you.

Yours truly,

Anne-Marie Kelso
Prosecuting Attorney

cc: Bryan Taylor and J.D. Huff (via email)

000023



OFFICE OF THE PROSECUTING ATTORNEY

Anne-Marie Kelso, Prosecutor

1130 Third Avenue North, #105

Payette, ID 83661

(208) 642-6096 (Telephone) (208) 642-6099 (Facsimile)

Barbara Richart
Chief
Deputy Prosecutor

Jennifer M. Carlquist
Deputy Prosecutor

Lisa Salto
Legal Assistant

Wendy L. Grigsby
Legal Assistant

Carrie Sundvall
Victim/Witness
Coordinator

VIA U.S. MAIL

February 14, 2012

Bryan Taylor
Canyon County Prosecutor
1115 Albany Street
Caldwell, ID 83605

Re: Officer involved shooting conflict case

Dear Bryan:

Enclosed are three binders provided by the Idaho State Police regarding the officer involved shooting that occurred in Payette County in December of 2011. Jim Christensen is the lead detective on this matter and is best reached on his cell phone at (208) 573-4233.

Thank you for reviewing this matter for charges against both the officer and Jamee Wade.

Yours truly,

Anne-Marie Kelso
Prosecuting Attorney

000024

HP LaserJet 3390

Fax Call Report



HP LASERJET FAX
2086726114
Mar-22-2012 14:56

Job	Date	Time	Type	Identification	Duration	Pages	Result
968	3/22/2012	14:56:08	Receive	Payette County Pros	0:25	2	OK

2012-03-22 18:58 Payette County Pros 2086426099 >> 2086726114 P 1/2



OFFICE OF THE PROSECUTING ATTORNEY

Anne-Marie Kelso, Prosecutor
1130 Third Avenue North, #105
Payette, ID 83661

VIA FACSIMILE
(208) 642-6096 (Telephone) (208) 642-6099 (Facsimile)
(208) 672-6114

Barbara Richart
Chief
Deputy Prosecutor

Jennifer M. Carlquist
Deputy Prosecutor

Lisa Salto
Legal Assistant

Wendy L. Grigsby
Legal Assistant

Carrie Sundvall
Victim/Witness
Coordinator

Ron Coulter

Camacho Mendoza Coulter

776 E. Riverside Drive, Suite 240
Eagle, ID 83616

Re: Public Records Request (Jannet L. Wade)

Dear Mr. Coulter:

I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. Upon completion of the Idaho State Police investigation, all materials were forwarded to the Canyon County Prosecutor's Office for review. I am enclosing the letter sent to Canyon County.

Although you did not request documents regarding the investigation done by the Payette County Sheriff's Office, I believe it was your intent to include all reports. Please note that although I am not the custodian of records for the Sheriff's Department, I do have access to reports. Deputies from the Payette County Sheriff's Office documented events occurring on December 22, 2011. However, since Canyon County is still reviewing the decision, additional evidence may be sought by Canyon County and/or additional interviews requested.

Therefore, based on the foregoing, I am declining your request for the following reasons:

1. I do not possess the documents specifically requested
2. The Payette County Sheriff's Office documents are exempt from disclosure at that time pursuant to Idaho Code Section 9-335(1)(l) and (e).

Thank you.

Yours truly,

Anne-Marie Kelso
Prosecuting Attorney

cc: Bryan Taylor and J.D. Huff (via email)

000025

Exhibit E

Canyon County Prosecutor
Public Record Request

Idaho Office
776 E. Riverside Dr
Suite 240
Eagle, ID 83616
208.672.6112
Fax: 208.672.6114
www.cmclawgroup.com

Maryland Office
7272 Wisconsin Ave
Suite 300
Bethesda, MD 20814
301.941.1957
eFax: 240.465.0368
www.cmclawgroup.com



CAMACHO MENDOZA COULTER
----- LAW GROUP -----

Natalie Camacho Mendoza,
ID & TX

R. A. (Ron) Coulter LtCol
USMC (Ret),
ID

Robert G. Teffeteller,
*Of Counsel,
ID & CA

Remington J. Johnson,
MD

March 22, 2012

Via Mail and Facsimile 208-454-7474

Bryan Taylor
Canyon County Prosecutor
1115 Albany Street
Caldwell, ID 83605

RE: Jamee L. Wade
1147-001
Public Writings Request

Dear Mr. Taylor:

Per Idaho Code §§ 9-337 through 9-347, I request that the following items be provided to me:

1. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Idaho State Police regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.
2. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Fruitland Police Department regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.
3. The complete investigation, to include all reports, and all documentary evidence that was conducted by the Payette County Sheriff's Office regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.

000027

It is my understanding that this request must be either granted or denied within three (3) working days of the date of your receiving the request; and, if you determine that more time is needed, it is my understanding that I will be so notified in writing and the documents will be provided to me within ten (10) working days of my request. Per Idaho Code § 9-339(2), it is also my understanding that if I do not hear from you within ten (10) days of this request, then my request will be deemed denied and I can appeal the denial. Further, it is my understanding that my request may be granted in part and denied in part depending on Fruitland's interpretation of exemptions provided by law. Yet, it is also my understanding that if my request is granted in part, that I will be notified in writing and provided the statutory authority for the partial denial, my right to appeal this decision and the time period in which I must file my appeal.

It is preferred that all documents be produced in electronic and searchable format as this would help expedite matters and save on cost of reproduction. Please send all materials to the following address:

Mr. R. A. (Ron) Coulter
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

This request is being sent to you based upon the denial of my public writings request filed with the Payette County Prosecuting Attorney. The Payette County Prosecuting Attorney has informed me that all materials were forwarded to your office. Specifically, Ms. Kelso stated the following:

I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. ***Upon completion of the Idaho State Police Investigation, all materials were forwarded to the Canyon County Prosecutor's Office for Review.*** I'm enclosing the letter sent to Canyon County (Emphasis added)

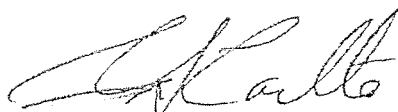
It is my understanding that the investigative effort of the lead investigative agency (the Idaho State Police) has been completed; see the enclosure to this correspondence. It is also my understanding that both the Fruitland Police Department's and the Payette County Sheriff's Office have been completed in this matter. Therefore, the exemption under I.C. 9-335(1) and 9-340B are inapplicable as providing the requested completed investigations would not:

- Interfere with an enforcement proceeding;
- Deprive, my client or the un-named officer of a fair trial;
- Constitute an unwarranted invasion of personal privacy;
- Disclose the identity of a confidential source; nor the information provided by a confidential source;
- Disclose investigative techniques and procedures; nor
- Endanger the life or physical safety of law enforcement personnel.

Your prompt attention to this matter will be greatly appreciated.

Should you have any questions, please feel free to contact me at (208) 672-6112.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Coulter", written in a cursive style.

R.A. (Ron) Coulter
Attorney for Mr. Wade

Encl: Payette County Prosecuting Attorney Letter to Ron Coulter dated March 22, 2012
Payette County Prosecuting Attorney Letter Bryan Taylor dated February 14, 2012

RAC/alw
cc: File

000029



OFFICE OF THE PROSECUTING ATTORNEY

Anne-Marie Kelso, Prosecutor

1130 Third Avenue North, #105

Payette, ID 83661

(208) 642-6096 (Telephone) (208) 642-6099 (Facsimile)

VIA FACSIMILE

(208) 672-6114

Barbara Richart

Chief

Deputy Prosecutor

Jennifer M. Carlquist

Deputy Prosecutor

Lisa Salto

Legal Assistant

Wendy L. Grigsby

Legal Assistant

Carrie Sundvall

Victim/Witness
Coordinator

Ron Coulter

Camacho Mendoza Coulter

776 E. Riverside Drive, Suite 240

Eagle, ID 83616

Re: Public Records Request (Jamee L. Wade)

Dear Mr. Coulter:

I am in receipt of your public records request. Please note that this office is not in possession of any documents or items you have requested. Upon completion of the Idaho State Police investigation, all materials were forwarded to the Canyon County Prosecutor's Office for review. I am enclosing the letter sent to Canyon County.

Although you did not request documents regarding the investigation done by the Payette County Sheriff's Office, I believe it was your intent to include all reports. Please note that although I am not the custodian of records for the Sheriff's Department, I do have access to reports. Deputies from the Payette County Sheriff's Office documented events occurring on December 22, 2011. However, since Canyon County is still reviewing the decision, additional evidence may be sought by Canyon County and/or additional interviews requested.

Therefore, based on the foregoing, I am declining your request for the following reasons:

1. I do not possess the documents specifically requested
2. The Payette County Sheriff's Office documents are exempt from disclosure at that this time pursuant to Idaho Code Section 9-335(1)(1) and (e).

Thank you.

Yours truly,

Anne-Marie Kelso
Prosecuting Attorney

cc: Bryan Taylor and J.D. Huff (via email)

000030



OFFICE OF THE PROSECUTING ATTORNEY
Anne-Marie Kelso, Prosecutor
1130 Third Avenue North, #105
Payette, ID 83661
(208) 642-6096 (Telephone) (208) 642-6099 (Facsimile)

Barbara Richart
Chief
Deputy Prosecutor

Jennifer M. Carlquist
Deputy Prosecutor

Lisa Salto
Legal Assistant

Wendy L. Grigsby
Legal Assistant

Carrie Sundvall
Victim/Witness
Coordinator

VIA U.S. MAIL

February 14, 2012

Bryan Taylor
Canyon County Prosecutor
1115 Albany Street
Caldwell, ID 83605

Re: Officer involved shooting conflict case

Dear Bryan:

Enclosed are three binders provided by the Idaho State Police regarding the officer involved shooting that occurred in Payette County in December of 2011. Jim Christensen is the lead detective on this matter and is best reached on his cell phone at (208) 573-4233.

Thank you for reviewing this matter for charges against both the officer and Jamee Wade.

Yours truly,

Anne-Marie Kelso
Prosecuting Attorney

000031

Idaho Office
776 E. Riverside Dr
Suite 240
Eagle, ID 83616
208.672.6112
Fax: 208.672.6114
www.cmclawgroup.com

Maryland Office
7272 Wisconsin Ave
Suite 300
Bethesda, MD 20814
301.941.1957
eFax: 240.465.0368
www.cmclawgroup.com



CAMACHO MENDOZA COULTER
----- LAW GROUP -----

Natalie Camacho Mendoza,
ID & TX

R.A. (Ron) Coulter LtCol
USMC (Ret),
ID

Robert G. Teffeteller,
*Of Counsel,
ID & CA

Remington J. Johnson,
MD

FACSIMILE COVER SHEET

CONFIDENTIALITY NOTICE - This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender, which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

Operator Name: Adia Wright

From: Camacho Mendoza Coulter Law Group

To: Bryan Taylor

Facsimile No.: 208-454-7474

Document(s) Being Transmitted: Records Request

A Hard Copy will: ☒ follow not follow

Date: March 23, 2012

This message consists of 5 page(s), including this cover page. Please check to see if you received the correct number of pages; if not, kindly contact us immediately either by return facsimile or by telephone.

File: Jamee Wade

File No.: 1147-001

Comment:

000032


HP LaserJet 3390

Fax Call Report



HP LASERJET FAX
2086726114
Mar-23-2012 13:04

Job	Date	Time	Type	Identification	Duration	Pages	Result
970	3/23/2012	13:02:04	Send	4547474	1:54	7	OK

Idaho Office 776 E. Riverside Dr Suite 240 Eagle, ID 83616 208.672.6112 Fax: 208.672.5114 www.cmlawgroup.com	 CAMACHO MENDOZA COULTER LAW GROUP	Natalie Camacho Mendoza, ID & TX R.A. (Ron) Coulter LtCol USMC (Ret), ID Robert S. Teffettier, "Of Counsel, ID & CA Ramington J. Johnson, MD
---	--	---

FACSIMILE COVER SHEET

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Operator Name: Adia Wright
From: Camacho Mendoza Coulter Law Group
To: Bryan Taylor
Facsimile No.: 208-454-7474
Document(s) Being Transmitted: Records Request

A Hard Copy will: ☒ follow not follow

Date: March 23, 2012

This message consists of 5 page(s), including this cover page. Please check to see if you received the correct number of pages; if not, kindly contact us immediately either by return facsimile or by telephone.

File: Jamee Wade File No.: 1147-001

Comment:

000033

Exhibit F

Canyon County Prosecutor

Public Record Request Denial



Canyon County Prosecuting Attorney

Bryan F. Taylor, JD, PhD

Canyon County Courthouse * 1115 Albany Street * Caldwell, ID 83605
Telephone: (208)454-7391 * General Fax: (208)454-7474 * Civil Fax: (208)455-5955



Christopher N. Topmiller
Chief Deputy
Criminal Division

Samuel B. Laugheed
Chief Deputy
Civil Division

March 30, 2012

Sent Via Facsimile

R.A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616
Facsimile: (208) 672-6114

Re: Records Request Dated March 22, 2012

Dear Mr. Coulter:

This letter acknowledge receipt of your records request dated March 22, 2012, which was received in this office on March 23, 2012, requesting the following:

1. *The complete investigation, to include all reports, and all documentary evidence that was conducted by the Idaho State Police regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police office on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.*
2. *The complete investigation, to include all reports, and all documentary evidence that was conducted by the Fruitland Police Department regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police officer on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.*
3. *The complete investigation, to include all reports, and all documentary evidence that was conducted by the Payette County Sheriff's Office regarding the shooting of Mr. Jamee L. Wade by a Fruitland Police office on or about December 22, 2011, near NW 2nd Avenue in Payette County, Idaho at approximately 8:00 p.m.*

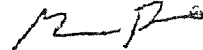
Due to the fact that the investigation of this case is pending, your request for this information must be denied, pursuant to Idaho Code § 9-335, because disclosure of the same would interfere with enforcement proceedings and could deprive the parties of the right to a fair trial or impartial adjudication.

000035

Camacho Mendoza Coulter Law Group
March 30, 2012
Re: Public Records Request Dtd. 3-22-2011
Page 2

If you feel that you have been improperly denied the information you requested, you have the right to institute proceedings in the district court of this county within 180 days from the date of the mailing of this letter to attempt to compel disclosure of that information.

Regards,



Michael K. Porter
Deputy Prosecuting Attorney

MKP:ll

000036

HP LaserJet 3390

Fax Call Report



HP LASERJET FAX
2086726114
Mar-30-2012 12:00

Job	Date	Time	Type	Identification	Duration	Pages	Result
988	3/30/2012	11:59:50	Receive	2084555955	0:41	3	OK

2084555955

11:58:33 a.m. 03-30-2012

1/3

FACSIMILE COVER SHEET

To: R.A.Coulter Camacho Mendoza Coulter Law Grp.	From: Michael K. Porter Deputy Prosecuting Attorney
DATE: 3-30-2012 TIME 12:05 p.m. PHONE: 208.672.6112 FAX: 208.672.6114	CANYON COUNTY PROSECUTING ATTORNEY'S OFFICE 1115 Albany Street Caldwell, Idaho 83605 PHONE: (208) 454-7391 FAX: (208) 455-5955

You should receive 3 pages, including this cover sheet. If you do not receive all pages, please call the telephone number listed above as soon as possible.

RE: Public Record Request Dated 3-22-2012

MESSAGE:

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents. Please call (208) 454-7391.

000037

FACSIMILE COVER SHEET

To: R.A.Coulter Camacho Mendoza Coulter Law Grp.	From: Michael K. Porter Deputy Prosecuting Attorney
DATE: 3-30-2012 TIME 12:05 p.m. PHONE: 208.672.6112 FAX: 208.672.6114	CANYON COUNTY PROSECUTING ATTORNEY'S OFFICE 1115 Albany Street Caldwell, Idaho 83605 PHONE: (208) 454-7391 FAX: (208) 455-5955

You should receive 3 pages, including this cover sheet. If you do not receive all pages, please call the telephone number listed above as soon as possible.

RE: Public Record Request Dated 3-22-2012

MESSAGE:

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents. Please call (208) 454-7391.

000038

LL

FILED
APR 27 2012
A.M. 4:05 P.M.

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

APR 27 2012
CANYON COUNTY CLERK
K CANO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

3744C
CASE NO. CV12-3774C

RESPONDENT'S ANSWER TO
PETITIONER'S PETITION FOR ACCESS
TO PUBLIC RECORDS

- 1. The State has acted in good faith and within the bounds of the public records act in denying Petitioners request.**

The Petitioner alleges that on December 22, 2011, he suffered two gunshot wounds at the hands of the Fruitland Police Department. A public records request was filed with the Canyon County Prosecutor on March 22, 2012. On March 30, 2012, the Petitioner's request was denied. The State relied on the plain language of Idaho Code in its denial of the Petitioner's request.

I.C. §9-335 states in relevant part:

000039

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

(a) Interfere with enforcement proceedings. . .

Idaho Code Ann. § 9-335 (West). The Idaho Supreme Court has determined that prosecutor's offices are "law enforcement agencies" as defined in I.C. 9-335. Bolger v. Lance, 137 Idaho 792, 795, 53 P.3d 1211, 1214 (2002). ("As used herein, the term "law enforcement agency" means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.") Id.

Furthermore, in the Gibson case the Supreme Court of Idaho, citing Bolger, ruled. I.C. §§ 9-335(1) and (2) controls over provisions, such as I.C. § 9-342(1), that might otherwise provide for disclosure of investigatory records. Gibson v. Ada County, 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003). In the Gibson case, a county employee was terminated for criminal conduct and the case sent to conflict counsel for review. The Gibsons made a public records request that was denied by the County on the grounds that the documents requested were "investigatory records." Id. at 788.

In the present case, the Canyon County Prosecutor's Office (CCPA) agreed to act as conflict counsel and review this matter. CCPA has had their investigators and their Chief Criminal Deputy assigned the case and a review of the evidence is ongoing. CCPA is clearly a law enforcement agency under the holding in Bolger and the conduct of CCPA is clearly contemplated and condoned under Gibson's interpretation of I.C. § 9-335.

2. The State's denial of his public records request will not prevent Petitioner from filing a claim under the Idaho Tort Claim (ITCA).


The Petitioner has sufficient information to provide sufficient notice to the government entity involved to meet the notice requirements under the ITCA. The State is investigating the incident involving the petitions. By definition, this investigation, the reason for the denial of Petitioner's request, will "allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the State's liability, if any, and allow the state to prepare defenses" if necessary. Driggers v. Grafe, 148 Idaho 295, 297, (Idaho App. 2009). The Petitioner has sufficient information and may file his notice within the timeframe required by statute and then supplement his claim with additional information once it is released. The ITCA does not require the Petitioner "prepare a comprehensive tort claim" in order to preserve his rights; notice is all that is required.

CONCLUSION

The State has acted under lawful authority and properly denied the Petitioner's request. The Petitioner is not precluded or prevented from filing a notice of tort claim under the ITCA by the State's actions. The Petitioner's request for disclosure and his request for attorney's fees should be denied.

DATED: April 27, 2012.

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney

By: 
Michael K. Porter
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2012, I caused a true and correct copy of the foregoing **ANSWER** to be served on the following in the manner indicated:

Ronaldo A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive Suite 240
Eagle, Idaho 83616
Fax: 208-672-6114

☐ U.S. Mail
☐ Overnight Delivery
☐ Hand Delivery
☒ Facsimile
☐ Email



Michael K. Porter
Deputy Prosecuting Attorney

LL

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. P.M.

MAY 01 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Defendants.

CASE NO. CV12-3774C

DEFENDANT CANYON COUNTY'S
MOTION TO DISMISS

COMES NOW the Defendant, by and through its attorney of record, MICHAEL K. PORTER, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office, and hereby requests the Court dismiss this action pursuant to Title 9, Chapter 3, Idaho Code, I.R.C.P. 41 and 12. Dismissing of the above entitled matter should be granted based upon the affidavit attached and on the grounds and for the reasons set forth below.

1. The State has acted in good faith and within the bounds of the public records act in denying Petitioners request.

The Petitioner alleges that on December 22, 2011, he suffered two gunshot wounds at the hands of the Fruitland Police Department. A public records request was filed with the Canyon County Prosecutor on March 22, 2012. On March 30, 2012, the Petitioner's request was denied. The State relied on the plain language of Idaho Code in its denial of the Petitioner's request.

I.C. §9-335 states in relevant part:

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

(a) Interfere with enforcement proceedings. . .

Idaho Code Ann. § 9-335 (West). The Idaho Supreme Court has determined that prosecutor's offices are "law enforcement agencies" as defined in I.C. 9-335. Bolger v. Lance, 137 Idaho 792, 795, 53 P.3d 1211, 1214 (2002). ("As used herein, the term "law enforcement agency" means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.") Id.

Furthermore, in the Gibson case the Supreme Court of Idaho, citing Bolger, ruled. I.C. §§ 9-335(1) and (2) controls over provisions, such as I.C. § 9-342(1), that might otherwise provide for disclosure of investigatory records. Gibson v. Ada County, 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003). In the Gibson case, a county employee was terminated for criminal conduct and the case sent to conflict counsel for review. The Gibsons made a public records request that was denied by the County on the grounds that the documents requested were "investigatory records." Id. at 788.

In the present case, the Canyon County Prosecutor's Office (CCPA) agreed to act as conflict counsel and review this matter. CCPA has had their investigators and their Chief Criminal Deputy assigned the case and a review of the evidence is ongoing. CCPA is clearly a law enforcement agency under the holding in Bolger and the conduct of CCPA is clearly contemplated and condoned under Gibson's interpretation of I.C. § 9-335.

2. The State's denial of Petitioner's public records request will not prevent the filing of a claim under the Idaho Tort Claim (ITCA).

The Petitioner has sufficient information to provide sufficient notice to the government entity involved to meet the notice requirements under the ITCA. The State is investigating the incident involving the petitions. By definition, this investigation, the reason for the denial of Petitioner's request, will "allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the State's liability, if any, and allow the state to prepare defenses" if necessary. Driggers v. Grafe, 148 Idaho 295, 297, (Idaho App. 2009). The Petitioner has sufficient information and may file his notice within the timeframe required by statute and then supplement his claim with additional information once it is released. The ITCA does not require the Petitioner "prepare a comprehensive tort claim" in order to preserve his rights; notice is all that is required.

CONCLUSION

The State has acted under lawful authority and properly denied the Petitioner's request. The Petitioner is not precluded or prevented from filing a notice of tort claim under the ITCA by the State's actions.

WHEREFORE, The County moves this court to dismiss this action and award attorney's fees to Defendant.

A hearing on the motion is requested.

DATED this 1st day of May, 2012.



MICHAEL K. PORTER
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 15 day of May, 2012, I caused a true and correct copy of the foregoing instrument to be served upon following in the manner indicated:

Ronaldo A. Coulter
1404 North Main Street, Ste. 100
Meridian, ID 83642
FAX: 208-672-6114

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Placed in Court Basket
- ☐ Overnight Mail
- ☒ Facsimile
- ☐ E-Mail



MICHAEL K. PORTER
Deputy Prosecuting Attorney

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

JAMEE L. WADE

Petitioner,

vs.

**BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,**

Respondent.

CASE NO. CV20112-3744-C

**AFFIDAVIT OF CHRISTOPHER N.
TOPMILLER**

STATE OF IDAHO)
) ss
Canyon County, Idaho)

I Christopher N. Topmiller, being first duly sworn upon oath deposes and says:

1. I am over the age of 18 years, and make this affidavit based upon my own personal knowledge.
2. At all times relevant to the facts covered in this affidavit, I have served as the Chief Criminal Deputy in the Canyon County Prosecuting Attorney's Office.
3. I was contacted by the Payette County Prosecuting Attorney's Office and asked to review an officer involved shooting for criminal charges on or about February 14, 2012.

AFFIDAVIT OF CHRISTOPHER N. TOPMILLER
CASE NO. CV2012-3744C

4. The officer had allegedly shot Jamee Lee Wade during a brief and escalating encounter outside Mr. Wade's residence.

5. I asked Bill Crawford, the Canyon County Prosecuting Attorney's Office Lead Investigator, to review the files and give me an assessment of the case on March 15, 2012.

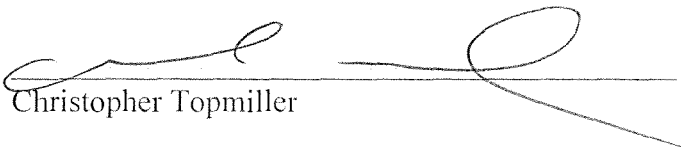
6. I then delivered the file to Chief Gary Deulen of the Canyon County Sheriff's Office for a review of the file and assessment of the case on or about April 1, 2012.

7. I then took that information provided by Chief Deulen and Investigator Crawford and began my own review of the case.

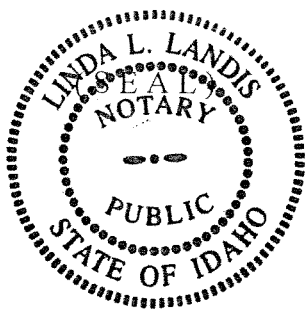
8. I am currently conducting that review.


DATED: April 30, 2012.

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney


Christopher Topmiller

SUBSCRIBED AND SWORN to before me this 30 day of April, 2012.




Notary Public for Idaho
Residing at: Notus, ID
My Commission Expires: 6-8-2013

FILED
A.M. 8:30 P.M.

JUN 05 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,)	
)	
Petitioner,)	CASE NO. CV 2012-3744*C
)	
vs.)	MEMORANDUM DECISION ON
)	PETITION FOR ACCESS TO
BRYAN F. TAYLOR, COUNTY)	PUBLIC RECORDS
PROSECUTING ATTORNEY, CANYON)	
COUNTY PROSECUTING ATTORNEY'S)	
OFFICE, a public agency,)	
)	
Respondent.)	
_____)	

The above entitled matter came on for hearing on the 4th day of May, 2012, and was continued to the 17th day of May, 2012. Ronaldo Coulter, attorney at law, appeared for the Petitioner. Michael Porter, Canyon County Deputy Prosecutor, appeared for the Respondent. This Court has reviewed the Petition for Access to Public Records filed on April 19, 2012, Respondent's Answer filed on April 27, 2012, the arguments presented at the hearings, and concluded that it was necessary to review the records contained in the prosecuting attorney's file *in camera*. The Court has completed its *in camera* review and sets forth its written decision below.

SUMMARY OF ARGUMENTS

Petitioner is considering a claim under the Idaho Tort Claims Act (ITCA) against certain government entity(ies) related to a December 22, 2011 incident involving Petitioner and a Fruitland Police Officer in which Petitioner was shot twice. Under I.C. §6-906, the Petitioner must file a tort claim by June 19, 2012. In order to evaluate the merits of the tort claim, Petitioner has requested copies of reports related to the incident that were prepared by the Idaho State Police, Fruitland Police Department, and Payette County Sherriff's Department.

The requirements to file a tort claim against government entity(ies) under I.C. §§ 6-903, 6-904, do not have a heightened pleading standard. Plaintiff simply must act timely to file notice of a tort claim against a government entity. Compliance with the ITCA notice requirement is a mandatory condition precedent to bringing suit, the failure of which is fatal to a claim, no matter how legitimate; the notice requirement is in addition to the applicable statute of limitations. I.C. §§ 6-906, 6-908. *Cobbley v. City of Challis*, 138 Idaho 154, 59 P.3d 959 (2002).

Under I.C. §6-907, "All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed..." The State argues in this case, the Petitioner could file a tort claim with the limited information available to him. Petitioner can describe the incident, his injuries and damages, the time and place this incident occurred, and the names of persons involved. The primary function of notice under the ITCA is to "put the governmental entity on notice that a claim against it is being prosecuted and thus apprise it of the need to preserve evidence and perhaps prepare a defense." *Blass v. County of Twin Falls*, 132 Idaho 451,452, 974 P.2d 503, 504 (1999).

Under the facts known to the Petitioner at this time, he can effectively submit a tort claim; however, his ability to pursue this claim will be hindered unless given access to the requested documents.

The Canyon County Prosecutor's Office has denied Petitioner access pursuant to I.C. §9-335. Respondents point out that the Canyon County Prosecutor's Office is a law enforcement agency under the language of I.C. §9-335 and if these documents were disclosed it could interfere

with enforcement proceedings, and/or deprive a person of a right to a fair trial, or an impartial adjudication.

ANALYSIS

The investigation file possessed by the Canyon County Prosecuting Attorney includes three white three-ring binders. Two of these binders contain Petitioner's medical records. The third binder contains police reports; interviews with witnesses, the alleged victim, and the officer involved; 911 audio recordings; dispatch reports, photographs, and a video of the shooting.

The State claims that these documents relate to an active investigation inasmuch as the Canyon County Prosecuting Attorney's Office has yet to make a charging decision, if any is to be made, related to the December 22, 2011 shooting. Additionally, the State argues that the video of the shooting and some police reports could impact Petitioner's statements in a prosecutorial hearing such as a preliminary hearing or a grand jury proceeding. Thus, it is the State's contention that the documents contained in this investigation file are exempt from disclosure because production of the records would interfere with enforcement proceedings and deprive a person of a right to a fair trial.

It appears from the Court's review of the documents that the last active investigation into this incident was on January 19, 2012 when Idaho State Police Detective Ken White interviewed the manager of the Reel Theater and collected a CD entitled "Video from Reel Theatre." Indeed, the Petition for access to these records argues that all of the subject investigations have been completed. Further, Petitioner cites to a letter written by the Payette County Prosecuting Attorney declaring that her office was no longer in possession of the documents as they had been forwarded to the Canyon County Prosecuting Attorney "*[U]pon completion of the Idaho State Police Investigation*". *Emphasis added.* Nevertheless, the Canyon County Prosecuting Attorney's Office continues to maintain that this remains an ongoing investigation even though over four and one-half months have gone by with no activity.

I.C. § 9-335(3) clearly sets forth that an "inactive investigatory record *shall* be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f)" of this code section. *Emphasis added.* The only provisions that the State claims are possibly applicable are (a) and (b). Thus, in order for this Court to find that the investigation file possessed by the

Canyon county Prosecuting Attorney is exempt from disclosure, it must find that disclosure will interfere with enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudicatory hearing.

The only argument presented by the State to support such a finding is that disclosure would *possibly* taint the testimony of the Petitioner in a grand jury proceeding or preliminary hearing. This disregards that Petitioner's statements about the incident have been preserved by recorded interviews of him taken January 12, 2012. Further, it assumes that he might perjure himself in order to improve the value of his tort claim. The language of the statute does not state that the records are exempt from disclosure if production *might possibly* interfere with enforcement proceedings. The statute requires that interference would result. This Court cannot make that finding.

The only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police Officer. Whether either person is charged with a crime is undecided. Indeed, the State may conclude that the evidence does not support a criminal charge against either party. But in the event a criminal charge is brought, this Court cannot find that disclosure of these documents would deprive either person of a fair trial or an impartial adjudication.

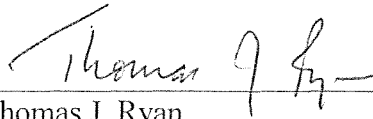
Therefore, the Court finds that the decision of the Canyon county Prosecuting Attorney's office is not justified. Accordingly,

ORDER

IT IS HEREBY ORDERED, that the Petition for Access to Public Records is GRANTED pursuant to the Court's reasoning above.

IT IS FURTHER ORDERED that the Canyon county Prosecuting Attorney's office make this record public.

Dated this 4th day of June, 2012.



Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

Ronaldo A. Coulter

Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

Bryan F. Taylor

Michael K. Porter

Canyon County Prosecuting Attorney
1115 Albany St.
Caldwell, Idaho 83605

6-5-12
Date



Deputy Clerk

mkp

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

FILED
A.M. 4:55 P.M.
JUN 06 2012
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Plaintiff,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY,
CANYON COUNTY PROSECUTING
ATTORNEY'S OFFICE, a public agency,

Respondent.

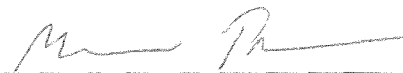
CASE NO. CV-2012-3744*C

**MOTION TO ALTER OR AMEND
JUDGMENT**

The Respondent County Prosecuting Attorney ("Prosecutor"), by and through its attorney of record, Michael K. Porter, hereby files this MOTION TO ALTER OR AMEND A JUDGMENT pursuant to Idaho Rules of Civil Procedure 59. The motion is timely having been filed within fourteen (14) days of the courts MEMORANDUM DECISION ON PETITION FOR ACCESS TO PUBLIC RECORDS. The Motion is supported by affidavits (attached) and a memorandum to be filed at a later date.

MOTION TO ALTER OR AMEND JUDGMENT
CASE CV12-3744

DATED this 6th day of June, 2012.




MICHAEL K. PORTER
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2012, I caused a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND JUDGMENT** to be served on the following in the manner indicated:

Ronaldo A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, suite 240
Eagle, Idaho 83616
Facsimile: 208-672-6114
ron@cmclawgroup.com

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Delivery
☐ Facsimile
☐ Email



Michael K. Porter
Deputy Prosecuting Attorney

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

CASE NO. CV20112-3744-C

AFFIDAVIT OF CHRISTOPHER N.
TOPMILLER

STATE OF IDAHO)
) ss
Canyon County, Idaho)

I Christopher N. Topmiller, being first duly sworn upon oath deposes and says:

1. I am over the age of 18 years, and make this affidavit based upon my own personal knowledge.
2. At all times relevant to the facts covered in this affidavit, I have served as the Chief Criminal Deputy in the Canyon County Prosecuting Attorney's Office.
3. I was contacted by the Payette County Prosecuting Attorney's Office and asked to review an officer involved shooting for criminal charges on or about February 14, 2012.

AFFIDAVIT OF CHRISTOPHER N. TOPMILLER
CASE NO. CV2012-3744C

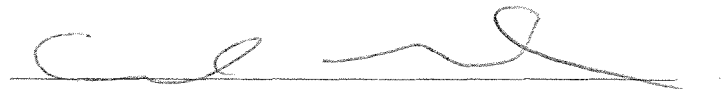
4. As a prosecuting attorney and judicial officer pursuant to Idaho constitution I retain the right to request additional information or investigation while reviewing a criminal case submitted for charging.

5. I am bound by the rules of professional responsibility, public policy, and good faith.

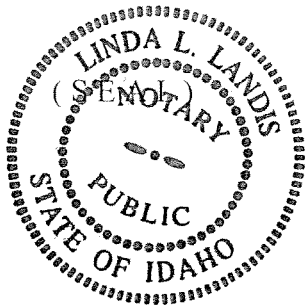
6. In my experience I believe subjecting a charging decision to artificially imposed time constraints compromises my oath of office.


DATED: June 6, 2012.

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney


Christopher Topmiller

SUBSCRIBED AND SWORN to before me this 6 day of June, 2012.




Notary Public for Idaho
Residing at: Notary, ID
My Commission Expires: 6-8-2013

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

CASE NO. CV20112-3744-C

AFFIDAVIT OF GARY DEULEN

STATE OF IDAHO)
) ss
Canyon County, Idaho)

I Gary Deulen, being first duly sworn upon oath deposes and says:

1. I am over the age of 18 years, and make this affidavit based upon my own personal knowledge.
2. At all times relevant to the facts covered in this affidavit, I have served as the Chief Deputy in the Canyon County Sheriff's Office.
3. I was contacted by the Chief Criminal Deputy in the Prosecuting Attorney's Office, Christopher Topmiller and asked to review an officer involved shooting for criminal charges on or about April 1, 2012.

4. The Officer had allegedly shot Jamee Lee Wade during a brief and escalating encounter outside Mr. Wade's residence.

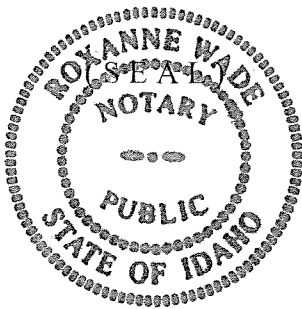
5. I reviewed the file gave my assessment of the case and delivered the file to the Chief Criminal Deputy on or about April 9, 2012.


DATED: June 6, 2012.

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney


Gary Deulen

SUBSCRIBED AND SWORN to before me this 6 day of June, 2012.




Notary Public for Idaho
Residing at: 1115 ALBANY ST, COLDWELL, ID 83605
My Commission Expires: 5/5/2017

000060

BRYAN F. TAYLOR, ISB #6400
MICHAEL K. PORTER, ISB #7502
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

CASE NO. CV20112-3744-C

AFFIDAVIT OF WILLIAM CRAWFORD

STATE OF IDAHO)
) ss
Canyon County, Idaho)

I William Crawford, being first duly sworn upon oath deposes and says:

1. I am over the age of 18 years, and make this affidavit based upon my own personal knowledge.
2. At all times relevant to the facts covered in this affidavit, I have served as the Lead Investigator in the Canyon County Prosecuting Attorney's Office.
3. I was contacted by the Chief Criminal Deputy in the Prosecuting Attorney's Office, Christopher Topmiller and asked to review an officer involved shooting for criminal charges on or about March 15, 2012.

4. The Officer had allegedly shot Jamee Lee Wade during a brief and escalating encounter outside Mr. Wade's residence.

5. I reviewed the file gave my assessment of the case and delivered the file to the Chief Criminal Deputy on or about March 29, 2012.

DATED: June 6th, 2012.

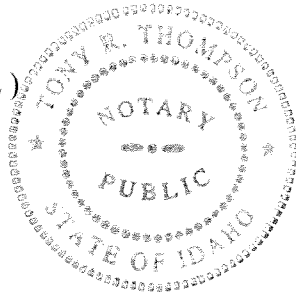
BRYAN F. TAYLOR
Canyon County Prosecuting Attorney




William Crawford

SUBSCRIBED AND SWORN to before me this 6th day of June, 2012.

(SEAL)





Notary Public for Idaho
Residing at: CCPA.
My Commission Expires: 07/13/13

BRYAN F. TAYLOR ISB NO. 6400
MICHAEL K. PORTER ISB NO. 7502
CANYON COUNTY PROSECUTING ATTORNEY'S OFFICE
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L 450 D
A.M. P.M.

JUN 12 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY,
CANYON COUNTY PROSECUTING
ATTORNEY'S OFFICE, a public agency,

Respondent.

CASE NO. CV 2012-3744

**MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND
JUDGMENT**

The Respondent Bryan F. Taylor, Canyon County Prosecuting Attorney, Canyon County Prosecuting Attorney's Office, a public agency ("County"), by and through its attorney of record, Michael K. Porter of the Canyon County Prosecuting Attorney's Office, hereby files this Memorandum in Support of MOTION TO ALTER OR AMEND JUDGMENT. Canyon County respectfully requests, the Court having entered a MEMORANDUM DECISION ON PETITION FOR ACCESS TO PUBLIC RECORDS, reconsider its ruling and modify the order to reflect the following: The public records in the above captioned matter, compiled for law enforcement

purposes by a law enforcement agency, are temporarily exempt from disclosure under Idaho Code § 9-335 *et seq.*

Nature of the Case

The Payette County Prosecuting Attorney's Office (hereinafter "PCPA") requested the Canyon County Prosecuting Attorney's Office (hereinafter "CCPA") review an officer involved shooting for possible criminal charges. During CCPA's review and follow-up investigation, Mr. Jamee L. Wade, the Petitioner and the individual shot by the officer, filed a public records request. The Petitioner requested copies of all police records, recordings, photographs, and additional investigations (hereinafter "documents"). CCPA denied Mr. Wade public records request under Idaho Code §9-335. A charging decision had not been made at the time of the denial. Mr. Wade filed an action, pursuant to the Idaho Public Records Act in the Third District Court before the Honorable Thomas Ryan. CCPA filed a Motion to Dismiss, supported by an affidavit, informing the court and Petitioner that a charging decision had not been made. Judge Ryan ordered CCPA to disclose copies of the entire investigatory file. The CCPA subsequently filed a Motion to Amend or Alter Judgment pursuant to Idaho Civil Rule of Procedure 59.

Factual & Procedural Background

For the purposes of this Motion to Amend or Alter Judgment, CCPA reiterates the factual and procedural background of the shooting; the case review, including follow-up investigation; and the events surrounding the public records litigation. For clarity and structure, the factual and procedural histories are incorporated together in a timeline format.

- **December 22nd, 2011: The Shooting¹**

On December 22, 2011 the Idaho State Police (ISP) received a call regarding an officer involved shooting in New Plymouth, Idaho. The Fruitland police officer involved in the shooting

¹ The factual background to the shooting is a generalized synopsis of the CCPA based on the current reports and investigation.

had responded to a call of an intoxicated person making threats to kill his mother. Upon arrival the Officer observed a white male (Mr. Wade) step out of a sports utility vehicle parked in the driveway and begin walking toward the officer's patrol car in an "aggressive and determined manner." The officer ordered the suspect to stop without success. The officer then ordered him to stop or "he would shoot." The suspect continued toward the officer stating "fucking do it then." The officer fired two rounds at the suspect, the suspect then grasped his chest and moaned before stumbling to the ground. The officer ordered the suspect to stay on the ground, to which the suspect responded "fuck you" and got to his feet. The officer then began to back pedal away from his patrol car in an attempt to create some distance and continued to give the suspect commands to remain on the ground. The suspect refused to comply and continued to pursue the officer, at this point the officer fired three additional rounds and the suspect fell to the ground. A second officer arrived on scene and the two officers secured the suspect and called emergency medical services.

- **February 14th, 2012: Conflict of the case.**

PCPA identifying a potential conflict of interest, and requested CCPA review the matter for possible charges as a Special Prosecuting Attorney.² CCPA accepted the request to act as a reviewing Special Prosecutor.³

² It is common practice amongst Prosecuting Attorney's Office's in the State of Idaho to conflict officer involved shooting cases to outside agencies. To avoid the appearance of impropriety and to assure that the case receives a fair and just review, outside prosecutor's office are more than willing to assist. Furthermore, it is also common practice, that upon initial review, a Prosecuting Attorney may request further investigation to be conducted. Whether it is follow up interviews, additional photographs, or other matters that need to be documented to make a charging decision as required by Idaho Statute. Duly appointed special prosecutor have the same power as elected prosecutor to file charges, lesser charges, and/or decline prosecution against a defendant. See *State v. Bacon*, 1990, 117 Idaho 679, 791 P.2d 429 (1990).

³ I.C. §31-2603 sets forth the requirements for the appointment of a special prosecutor. A case being sent for review is not filed with the court and as a result there is no companion court pleadings filed. The statute, I.C. §31-2603, allowing appointment by a district court of a special prosecutor to assist in State's case against particular defendant, permits special prosecutor to assist in all related proceedings (including additional investigation). *State v. Bacon*, 117 Idaho 679, 791 P.2d 429 (1990). Typically when a case is being handled by a special prosecutor, a petition from the requesting Prosecuting Attorney along with a signed order from a District Judge is filed. Often times when cases are sent to a prosecuting attorney's office for review, the request is done through formal letters, emails, or even a phone call. The agreement is if charges are deemed appropriate, the agency who reviewed the reports will apprise the conflicting agency and at that time the paper work is initiated.

- Between February 14th and March 15th, 2012: 1st prosecutorial review by CCPA

During this time the case is sent over to the CCPA. For approximately one month, Christopher Topmiller (see affidavit) while continuing to fulfill his responsibilities as Chief Criminal Deputy reviews the voluminous file.⁴

- March 13th, 2012: Wade files a public records request through counsel on ISP
- March 15th, 2012: ISP denies Wade's request and suggests that he contact PCPA.
- March 15th, 2012: Request by CCPA is made for additional investigation

Upon his initial review of the case, Deputy Topmiller determines that additional investigation is needed in order to make a charging decision. Lead investigator Bill Crawford (see affidavit) and CCPA deputy investigator Tony Thompson are tasked to conduct follow-up investigations. Investigators Crawford and Thompson conducted further inquiry as requested.

- March 22nd, 2012: Request and denial of records from PCPA

⁴ I.C. §31-2604 sets outlines the duties of the prosecuting attorney. That statute sets forth in part: It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.
2. To prosecute all felony criminal actions, irrespective of whom the arresting officer is; ...; to conduct preliminary criminal examinations which may be had before magistrates; ...
4. ...To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses...
6. To perform all other duties required of him by any law. (emphasis added)

One of the additional duties required by law is to provide all parties a fair and just prosecution. "Every person accused of crime in Idaho has the right to a fair and impartial trial. It is the primary and fundamental duty of the prosecuting attorney and his assistants to see that an accused receives a fair trial." *State v. Wilbanks*, 95 Idaho 346, 353, 509 P.2d 331, 338 (1973); see also *State v. Haggard*, 94 Idaho 249, 251, 486 P.2d 260 (1971); *Pulver v. State*, 93 Idaho 687, 691, 471 P.2d 74 (1970); *State v. McKeehan*, 91 Idaho 808, 821, 430 P.2d 886 (1967); *State v. Storms*, 84 Idaho 372, 378, 372 P.2d 748 (1962).

It is common practice of prosecutors throughout the State of Idaho to employ their own investigators as well as request additional investigation to assist in their charging decision and/or their eventual prosecution. See *Rowles v. Country Kitchen Intern., Inc.*, 99 Idaho 259, 261, 580 P.2d 862, 864 (1978)(deputy prosecuting attorney prior to the preparation of the criminal complaint requested an investigation to be made by the office of the prosecuting attorney with assistance of three police officers); *Clark v. Meehl*, 98 Idaho 641, 643, 570 P.2d 1331, 1333 (1977)(Idaho Supreme Court acknowledge the Attorney General's Office to utilize an investigator to commence a criminal proceeding).

Wade files a public records request upon PCPA. The same day, PCPA denies Wade's request, advising him that the case has been conflicted to CCPA.

- **March 22nd, 2012:** Wade files a public records request through counsel upon CCPA.
- **March 29th, 2012:** Discussion between investigators and prosecutor.

Investigators Crawford and Thompson meet with Deputy Topmiller to discuss the case and follow-up investigation. It is determined that a secondary investigative review should be conducted.

- **March 30th, 2012:** CCPA denies Wade's request citing 9-335.
- **April 1st, 2012:** Request is made for additional review/investigation.

Chief Deputy Gary Deulen (see affidavit) of the Canyon County Sheriff's Office is asked to review the matter. Chief Deulen receives the file and begins his review/investigation.

- **April 9th, 2012:** 2nd prosecutorial review by CCPA

Chief Deulen provides Deputy Topmiller with his review/investigation. Deputy Topmiller takes the file and the recommendations of Crawford, Thompson and Deulen and commences a second prosecutor review of the case determining whether or not any additional investigation is needed before making a charging decision.

- **April 19th, 2012:** Wade files a petition in District Court to access public records.
- **May 4th, 2012:** 1st set of District Court Arguments

Both parties involved presented oral arguments regarding their respective positions. The court advised both sides that it would set the matter over for a two week period of time to see if the prosecutorial review for charging decision could be completed.

- **May 17th, 2012** : 2nd set of District Court Argument

The CCPA informed the court that it had not made a charging decision and that the records were not available because a charging decision had not been made yet. The Court order the CCPA

files and documents and performed an in camera review to determine if the records should be excluded from disclosure under I.C. § 9-335.

- **June 5th, 2012: Courts decision**

The court issued its memorandum decision stated that the disclosure of the records would not interfere with the investigation and that the CCPA was “not justified” in its not disclosing the records in an open case in which the Prosecuting Attorney’s Office was reviewing for criminal charges.

- **June 6th, 2012: CCPA files its Motion to Reconsider with additional affidavits.**
- **June 12th, 2012: Charging decision has not been made.**

As of this date, the CCPA is still contemplating differing legal theories, options, and conclusions related to the officer involved shooting and have not made a determination of whether to file or not file.

Statement of Law

Motion to Alter or Amend Judgment

Idaho Rule of Civil Procedure 59(e) allows a motion to alter or amend a judgment within fourteen (14) days. Idaho R. Civ. P. 59. Similarly, Idaho Rule of Civil Procedure 11(a)(2)(B) a motion to reconsider “any order” by a court made after entry of a final judgment within fourteen (14) days. Idaho R. Civ. P. 11. “The Idaho Rules of Civil Procedure do not provide for a petition to reconsider a memorandum decision” as such a petition to reconsider should be reviewed as a motion to alter or amend judgment pursuant to I.R.C.P. 59(e). Obray v. Mitchell, 98 Idaho 533, 538, 567 P.2d 1284, 1289 (1977).

Standard of Review

The Standard of review in a motion to alter or amend judgment requires the court to weigh the evidence as in the first instance. Id.

Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based.

Barmore v. Perrone, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008).

Public Records Act

The Public Records Act affords every person the right to examine and take a copy of any public record of the state. Idaho Code Ann. § 9-338 (West). Idaho Code §9-335 limits the right to inspect public records.

Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would: (a) *Interfere with enforcement proceedings*; (b) *Deprive a person of a right to a fair trial or an impartial adjudication*; (c) *Constitute an unwarranted invasion of personal privacy*; (d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source; (e) *Disclose investigative techniques and procedures*; or (f) Endanger the life or physical safety of law enforcement personnel.

(emphasis added) Idaho Code Ann. § 9-335 (West).

“The legislature made it absolutely clear that the provisions of I.C. § 9-335 are to control over any contrary provisions when it began that section with the phrase ‘Notwithstanding any statute or rule of court to the contrary.’ Consequently, section 9-335 controls the overall analysis.”

Bolger v. Lance, 137 Idaho 792, 796, 53 P.3d 1211, 1215 (2002).

Issues Presented

The plain and ordinary meaning of the adjective “pending” is “[r]emaining undecided; awaiting decision....” *Black’s Law Dictionary* 1154 (7th ed.1999). “ [T]he term “pending” means nothing more than “remaining undecided.” ’ [Cit.]” *Fidelity Investment Co. v. Anderson*, 66 Ga. App. 57, 58, 17 S.E.2d 84 (1941); Unified Government of Athens-Clarke County v. Athens Newspapers, LLC, 284 Ga.

192, 195, 663 S.E.2d 248, 251 (Ga.,2008.) From the beginning CCPA has stated that this is a pending investigation and that premature disclosure of the records to the public would interfere with enforcement proceedings. CCPA's concerns only grow with the notion of disclosing the entire contents of the file to a possible defendant or potential witness in a felony criminal investigation before a charging decision is made.

1. Investigatory Records

Idaho Code 9-335 exempts documents from disclosure if: 1) they are investigatory records, 2) compiled by a law enforcement agency, 3) for a law enforcement purpose. Idaho Code Ann. § 9-335 (West). This exemption only applies to the extent that one of six (6) additional factors is present. *Id.* This case triggers at minimum three of the six additional factors: disclosure would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication; and /or constitute an unwarranted invasion of personal privacy. Further, it could be argued that it triggers a fourth, disclosure of investigative techniques and procedures or law enforcement (which includes prosecution).

CCPA is a law enforcement agency under I.C. § 9-335. *Bolger v. Lance*, 137 Idaho 792, 796, 53 P.3d 1211, 1215 (2002). As the courts memorandum states the records were compiled by law enforcement after an officer involved shooting occurred in Payette County. The records compiled by the state, reviewed by the court and sought by the Petitioner are in CCPA's possession to determine whether a crime has occurred and should be charged and therefore exist for a law enforcement purpose. All that is left under a 9-335 analysis is to determine which additional factors apply.

2. Exceptions under I.C. 9-335 applicable to Petitioner's Request

a. Disclosure would interfere with enforcement proceedings

The State provided the court with several examples of how disclosure might interfere with enforcement proceedings. The court found one persuasive at hearing. The disclosure of an ongoing criminal investigation to a potential witness or victim can potentially taint any future testimony. The courts of this district go to great lengths to ensure that witnesses do not talk to each other during trial and that witnesses are excluded from hearings where testimony may be presented to ensure that testimony is not influenced. The premature disclosure of police reports, forensics, photos of the scene, officer's observations, and medical records all have the potential to affect the outcome of criminal proceedings.

b. Disclosure would deprive a person of a right to a fair trial or an impartial adjudication.

Grand jury indictments are often sealed and proceedings held outside of the public's knowledge to ensure that suspects are available and within the jurisdiction when criminal charges are pursued. Grand jurors are given stern warnings about ever revealing information related to the cases they hear. These warnings are there to protect the integrity of the investigation and the rights of individuals under investigation.

Every member of the grand jury must keep secret whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; and such matters shall be subject to disclosure according to chapter 3, title 9, Idaho Code

Idaho Code Ann. § 19-1112 (West)

"Grand jury proceedings are intended, to the extent possible, to be secret. All of the grand jurors are required to take an oath that includes the following provision:"

You will keep your own counsel, and that of your fellows, and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said nor the manner in which you or any other grand juror may have voted in any matter before you.

Idaho Code § 19-1011 & -1012. A grand juror who violates that oath commits a misdemeanor. Idaho Code § 18-4403. In addition, Idaho Code § 19-1111 limits the persons who can be present during grand jury sessions. Finally, Idaho Criminal Rule 6.3(b) provides that upon the conclusion of each matter presented to the grand jury, the clerk is to seal the record of the proceedings and that the record is not to be examined by anyone or transcribed except upon order of the district judge.

In re Petition for Review of Hearing Comm. of Prof'l Conduct Bd. of Idaho State Bar, 140 Idaho 800, 805, 102 P.3d 1119, 1124 (2004)

The courts have gone to great lengths to protect the secrecy of grand jury proceedings. The idea that a Tort claim should defeat the need for secrecy in pending criminal matters seems antithetical to the efforts Idaho Code, Idaho Criminal Rule and Idaho Case law go to protect those subject to investigation. The rights of the accused to a fair trial include the need to protect against publicity. “The validity of a court's decision to try a case in a particular venue is tested by whether, in the totality of existing circumstances, juror exposure to pretrial publicity resulted in a trial that was not fundamentally fair.” State v. Yager, 139 Idaho 680, 85 P.3d 656 (2004).

Under either a prong of I.C §9-335 the court should deny the petitioners request. When the petitioners only prejudice is the need to file an amended complaint in a tort action is weighed against the protections of the integrity of a felony criminal investigation and the reputation and right to a fair trial of potential defendants and witnesses the scales must tip strongly in the favor of a denial of the defendant's request. The Petitioner will be able to file his Tort claim⁵, a possible defendant cannot un-ring the bell of publicity. The law recognizes this and provides protections to persons subject to investigation by carving out penalties for early disclosure and exceptions to the public records laws of Idaho.

3. **The Court recitation of the facts contains clear error.**

The Court states in its Memorandum Decision, “It appears from the Court's review of the documents that the last active investigation into this incident was on January 19, 2012. . .” (Ct. Mem.

⁵ The Court in its Memorandum clearly articulates this fact: “under the facts known to the Petitioner at this time, he can effectively submit a tort claim.” (Cts. Mem. pg. 2)

Dec., pg. 3). The Court then reasons that since the Idaho State Police are no longer investigating the matter is an “inactive investigation.” (pg. 3). In order for the court’s analysis to be correct the affidavit of Chris Topmiller outlining the work done on the investigation must either have been overlooked or ignored.

The court either believes that any further investigation or review by Chris Topmiller, Bill Crawford and Gary Deulen are not investigation and therefore “four and one-half months have gone by with no activity” or Deputy Topmiller’s affidavit was overlooked or ignored in the writing of the courts memorandum. Unfortunately, the Memorandum Decision is silent on this issue. The Court’s analysis is in error if the court failed to consider or review the affidavit of Deputy Topmiller. I.C. 9-335(c) does not apply if the efforts of Deputy Topmiller, Bill Crawford and Gary Deulen are considered an active investigation.

4. Separation of Powers – Judiciary and Prosecuting Attorney

Article II, Section 1 of the Idaho Constitution provides for the separation of powers:

The powers of the government of this state are divided into three distinct departments, the legislative, the executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

A government functions best when its powers are not concentrated in a single authority but are divided among different groups or branches. The separation of powers is qualified by the doctrine of *checks and balances* within the government and between the three branches;

- a. Legislative power: The power to make the law.
- b. Executive power: The power to enforce the law.
- c. Judicial power: The power to interpret the law.

“If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive and judicial powers.” 1 Annals of Congress, 581. “The doctrine of the separation of powers was adopted by the convention of 1787

not to promote efficiency but to preclude the exercise of arbitrary power.” Myers v. U.S., 272 U.S. 52, 293, 47 S.Ct. 21, 85 (1926)(Justice Brandeis dissenting). See also Meriwether v. Garrett, 102 U. S. 472, 515 (1880); Kilbourn v. Thompson, 103 U. S. 168, 190 (1880); Mugler v. Kansas, 123 U. S. 623, 662, 8 S. Ct. 273 (2001).

a. Role of the Judiciary

The primary responsibility of the judicial branch is to determine meaning in the Constitution and ensure the law is administered justly. When competing interpretations of law arise, the judicial branch must offer clarification by way of setting “precedent” for future cases through its rulings. The judicial branch does not write laws; that is the responsibility of the legislative branch. The judicial branch does not enforce and/or prosecute the laws; that is the responsibility of the executive branch.

Just as the Idaho constitution prohibits the legislature (and for that matter the executive) from usurping powers properly judicial, so does that provision prohibit improper judicial invasion into the province of other branches of government. Const. Art. 2, § 1. See also Idaho Schools For Equal Educational Opportunity v. State, 97 P.3d 453, 140 Idaho 586 (2004). In re SRBA Case No. 39576, 128 Idaho 246, 912 P.2d 614 (1995), rehearing denied; U.S. v. Martinez-Ortega, 684 F.Supp. 634 (D. Idaho, 1988), affirmed and remanded 879 F.2d 541 (discusses the violation of the separation of powers as applicable under federal law). In cases specifically involving the Judicial Branch, the U.S. Supreme Court has expressed its vigilance against two dangers: first, that the Judicial Branch neither be assigned nor allowed “tasks that are more properly accomplished by [other] branches,” Morrison v. Olson, 487 U.S. 654, 680-681, 108 S.Ct. 2597, 2613 (1988), and, second, that no provision of law “impermissibly threatens the institutional integrity of the Judicial Branch.” Commodity Futures Trading Comm'n v. Schor, 478 U.S. 833, 851, 106 S.Ct. 3245, 3258 (1986).

b. Role of the Prosecuting Attorney

Article V, §18 of the Idaho Constitution creates the office of Prosecuting Attorney. Title 31, Chapter 26 sets the qualifications, duties, and responsibilities of the prosecuting attorney. I.C. §31-2604 provides specifically the duties of the prosecuting attorney. It reads in part:

It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party;...
2. *To prosecute all felony criminal actions*, irrespective of whom the arresting officer is; to prosecute all misdemeanor or infraction actions for violation of all state laws or county ordinances when the arresting or charging officer is a state or county employee; *to conduct preliminary criminal examinations* which may be had before magistrates; to prosecute or defend all civil actions in which the county or state is interested;...
4. To attend, when requested by any grand jury for the purpose of examining witnesses before them...;
6. To perform all other duties required of him by any law.

(emphasis added)

Under the authority of Article V, §18, the State of Idaho has vested in the Prosecuting Attorney the power to conduct criminal litigation, *preliminary criminal examinations*, and all other duties required of him by law on behalf of the People of the county in which he holds office. In essence prosecuting attorneys are vested with discretion in deciding when to prosecute. *State v. Wilbanks*, 95 Idaho 346, 352, 509 P.2d 331, 337 (Idaho 1973) Cf. I.C. s 19-1306. See generally Annot., 155 A.L.R. 10 (1945).

According to I.C. §31-2604, the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case as set forth in Idaho Statute and inferred through the state constitution. See also *U.S. v. Nixon*, 418 U.S. 683, 692-93, 94 S. Ct. 3090, 3100 (1974); *Confiscation Cases*, 7 Wall. 454, 19 L. Ed. 196 (1869); *United States v. Cox*, 342 F.2d 167, 171 (5th Cir.,

2004), cert. denied sub nom. Cox v. Hauberg, 381 U.S. 935, 85 S. Ct. 1767(1965). It is contemplated by I.C. §31-2604, that a Prosecuting Attorney's decision, determines what evidence is needed, what further investigation needs to be conducted, and whether criminal charges are filed upon whom. not the judicial or legislative branches.

c. The District Court has encroached upon the duties of the Prosecuting Attorney.

The Judicial Branch cannot and should not encroach upon the other branches of government, specifically in this case the Executive Branch. "[T]he greatest security," wrote James Madison, "against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others." The Federalist No. 51, p. 349 (J. Cooke ed. 1961). Accordingly, the Framers of the U.S. Constitution "built into the tripartite Federal Government ... a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." Mistretta v. U.S., 488 U.S. 361, 381-82, 109 S.Ct. 647, 660 (1989) citing Buckley v. Valeo, 424 U.S., 1, 122, 96 S.Ct. 612, 684. See also INS v. Chadha, 462 U.S. 919, 951, 103 S.Ct. 2764, 2784 (1983). Allowing for the judicial system to encroach upon the Executive Branch would clearly violate the separation of powers clause of the Idaho Constitution. Brandt v. State, 118 Idaho 350, 352, 796 P.2d 1023, 1025 (1990); See Standlee v. State, 96 Idaho 849, 538 P.2d 778 (1975); Spanton v. Clapp, 78 Idaho 234, 299 P.2d 1103 (1956). See also State v. Eighth Jud. Dist. Ct., 85 Nev. 485, 457 P.2d 217 (1969).

The County contends that the District Court in this current case has encroached upon the duties of the Prosecuting Attorney as articulated in its Memorandum and thus may have violated the separation of powers clause of the Idaho Constitution in three ways: (1) interfering with the prosecuting attorneys ability to assure all parties involved are entitled to a fair and impartial trial, (2)

placing a time frame on when the prosecutor needs to make a charging decision, and (3) reviewed the documents and made a determination that only two individuals could be charged.

Encroachment #1: interference with fairness to all parties involved.

A prosecuting attorneys constitutional and statutory obligation is to assure fairness to all parties involved when a case is pending review for charging decision. “Every person accused of a crime in Idaho has the right to a fair and impartial trial. It is the primary and fundamental duty of the prosecuting attorney and his assistants to see that an accused receives a fair trial.” *State v. Wilbanks*, 95 Idaho 346, 353, 509 P.2d 331, 338 (1973); *see also State v. Haggard*, 94 Idaho 249, 251, 486 P.2d 260 (1971); *Pulver v. State*, 93 Idaho 687, 691, 471 P.2d 74 (1970); *State v. McKeehan*, 91 Idaho 808, 821, 430 P.2d 886 (1967); *State v. Storms*, 84 Idaho 372, 378, 372 P.2d 748 (1962). “Counsel for the people in a criminal case must constantly keep in mind that the people he represents are only concerned with the truth and the facts established by competent admissible evidence.” *State v. Wilbanks*, 95 Idaho 346, 353, 509 P.2d 331, 338 (1973). Parties involved include everyone from suspects to victims and witnesses.

By ordering disclosure of the documents, the Court has in essence taken away the Prosecuting Attorneys constitutional and statutory duty to provide a fair and impartial trial to all parties. As the courts of Idaho have held, this is the fundamental duty of a prosecuting attorney. By giving the documents to Wade, the Court affords greater deference to Wade’s claims than the protections of the Fruitland Police Officer’s rights to a fair proceeding. Both individuals, not just Mr. Wade are entitled to fairness in the preliminary review of criminal examinations and charging decisions both outlined in I.C. §31-2604.

The Court indicates in is Memorandum that “disclosure of these documents [would not] deprive either person [Wade or Fruitland Police Officer] of a fair trial or an impartial adjudication.” (pg. 4). The CCPA disagrees. By disclosing these documents to Wade and his counsel, the court

has ultimately decided that the documents are now public records. Since they are now in the public setting, what prevents the media and/or other interested parties from requesting these documents.⁶ The proverbial floodgates would be opened, and neither Mr. Wade nor the Fruitland Police Officer would receive the fair and impartial trial they would have gotten if the records were not disclosed as public records. Mr. Wade and the Fruitland officer are exposed to public scrutiny and examination for possible criminal liability before any charging decision has been made.

The Court's Memorandum is setting a distressing precedent by allowing the disclosure of these documents. The precedent could be interpreted as saying anytime a case arrives to a Prosecuting Attorney's Office, they are public records and are accessible to anyone, which would include interested parties, the media, or anyone willing to submit a public records request. By determining that an investigation ends when the initial investigation concludes, the plain language of the statute is defeated. By this rationale, a prosecutor would never fall under the protection of I.C. 9-335. The flood gates are opened to any and every criminal case that is received, thus eliminating the entire concept of fairness in a trial setting.

Encroachment #2: placing a time frame on charging decision of a prosecutor

The Prosecuting Attorney has sole discretion of when to file a criminal matter. There are a plethora of reasons why some cases can be charged quickly and others take a very long time to be decided, a prosecutor does not need to articulate those reasons. The legislature has placed a restriction upon the prosecuting attorney regarding when they have to make a charging decision in a criminal matter; known as statutes of limitations. I.C. §19-402 sets forth the guidelines for the commencement of prosecutions of felonies.

A prosecution for any felony other than those specified in section 19-401, Idaho Code, must be commenced by the filing of the complaint or the finding of an

⁶ This similar issue and concerns were magnified greatly in the April 20, 1999 Columbine High School shootings. Once one piece of evidence was released to the family, nothing prevented the media and other interested parties from flooding the law enforcement agency with public records request.

indictment within five (5) years after its commission provided however, a prosecution under section 18-1506A, Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim.

The judiciary should not provide a time frame to the prosecuting attorney when a charging decision should be made, as it has already been legislated. By doing so, the Judicial Branch goes beyond its purview and duties. In this case, the Court on May 4th, 2012 indicated that it would give the prosecution two (2) weeks to determine whether it could make a charging decision. Furthermore, in its Memorandum the court eludes to the CCPA taking too long to make a criminal charging decision which in essence “hinders” Wade’s pursuit of a Tort claim.⁷ (Ct. Mem. Dec., pg. 2-3). The Court does acknowledge that “under the facts known to the Petitioner [Wade] at this time, he can effectively submit a tort claim” but it would be easier for him to do so if he had the records. (pg. 2). Thus, the Court’s ruling indicates that it has determined it is more important for a Petitioner to have access to documents to help him better formulate a civil tort claim than to allow the Prosecuting Attorney to effectively perform his duties and responsibilities as directed by the Idaho Constitution and the U.S. Constitution. By trying to force the prosecuting attorney to make a charging decision quickly so the civil tort claim can commence, this Court has encroached upon the constitutionally mandated authority of the CCPA.

Encroachment #3: Court has made determination of who can be charged.

According to I.C. §31-2604(2), the prosecuting attorney has the duty to “prosecute all felony criminal actions, irrespective of whom the arresting officer is...” The Court in this case, conducted an *in camera* review of the documents, and in its Memorandum states “[t]he only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police

⁷ The court in its Memorandum alludes that the CCPA has taken over four and one-half months to review the case and that is just too long. There is no constitutional authority for either the Judicial or Legislative Branch to direct how quickly the Prosecuting Attorney has to review a case. The only provision is what the Legislature has already established when it said when it created a statute of limitations upon the Prosecuting Attorney. In this case based on the facts provided above, the Prosecuting Attorney could hold on to the case for up to five (5) years.

Officer.” (pg. 4). The Court by this language has now limited the scope of the Prosecuting Attorney regarding possible charging decisions. If the prosecuting attorney determined that there was someone who aided and abetted, the Court’s Memorandum would significantly hinder him to fulfill its constitutional and statutory duties. Basically, the court has established an argument for any other potential defendants to say, “the District Court did not believe that I could be charged, so why does the Prosecuting Attorney think so.” This encroaches upon the duties of the CCPA by this Court, by limiting it to only being able to review two individuals out of this incident.

5. The Petitioner cannot bypass proper discovery channel’s already established by law.

An additional basis for the Canyon County Prosecutor’s Attorney’s Office action of denying disclosure of these documents being justified⁸ is found in I.C. §9-343(3) of the Idaho Public Records Act. This statute provides counsel with the proper course of obtaining these records is through the channels of discovery in a civil or criminal case. The availability of records for administrative and judicial adjudicatory proceedings shall not be limited by the Idaho Public Records Act. *See O.A.G. opinion 95-6.* The statute reads in part:

Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceeding...

The Idaho Public Records Act expressly recognizes that the laws and rules of evidence and of discovery governing civil proceedings (i.e. the Idaho Rules of Civil Procedure) dictate what evidence may be obtained for those proceedings, not the Idaho Public Records Act. By this Court’s decision to compel the Canyon County Prosecuting Attorney to disclosure said documents, it is in essence saying that the Idaho Public Records Act governs the issue rather than the rules established by the Idaho Supreme Court and the Idaho State Legislature.

⁸ The Court in its Memorandum Decision on Petition for Access to Public Records, that the Canyon County Prosecuting Attorney’s Office is “not justified.” (pg. 4).

When the Idaho State Legislature amended I.C. §9-343(3) in 2001, the law was intended to underscore that the intent of the legislature was in that the Idaho Public Records Act was “never intended for use as a discovery vehicle for civil, criminal, or administrative litigation.” 2001 Idaho Laws Ch. 101 (H.B. 151).⁹ Idaho Code §9-343(3) provides that certain sections of the Idaho Code, (including Section 9-335 which the State contends covers the particular documents in question), shall not “be available to supplement, augment, substitute or supplant discovery procedures in any other federal, *civil* or administrative proceeding.” (emphasis added). The plain language of the statute provides that a public records request is not available to supplement or augment discovery proceedings pursuant to I.C. §9-343(3).

Rather, the legislature wanted parties to proceed through the proper rules of procedure and evidence to obtain discovery whether it in a civil, criminal, or administrative matter. In a civil case the production of documents is a discovery method. I.R.C.P. 26. The appropriate method to obtain such records in a civil lawsuit (such as the Tort action Mr. Wade intends to file) is to comply with the Idaho Rules of Civil Procedure. This court recognizes in its Memorandum Decision that the Petitioner is not precluded from submitting a tort claim by the Respondent’s denial of his request.

In this case Mr. Wade has made clear to the court and counsel, that he wants the documents so he can file a civil tort claim against the Fruitland police department. Rather than filing the claim, then proceeding through the Idaho Rules of Civil Procedure to obtain the discovery, he has elected to by-pass the discovery process by filing a public records request. By this Court granting his request, it is defeating the very intent behind the Idaho Legislature when it enacted I.C. §9-343(3) by allowing the Idaho Public Records Act to be used as discovery vehicle for civil litigation.

Therefore, the Respondent respectfully requests this court alter its memorandum decision and deny the Petitioner’s request.

⁹ Statement of purpose RS 10873 from the 2001 legislative session.

DATED this 12th day of June, 2012.



MICHAEL K. PORTER
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 12 day of June, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Ronald A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616
Facsimile: 208-672-6114

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Placed in Court Basket
- ☐ Overnight Mail
- ☒ Facsimile
- ☐ E-Mail



MICHAEL K. PORTER
Deputy Prosecuting Attorney

RONALDO A. COULTER (ISB No. 3850)
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ron@cmclawgroup.com

Attorney for Petitioner

F I L E D
10:21 A.M. P.M.

JUN 19 2012

CANYON COUNTY CLERK
K WHITMIRE, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

JAMEE L. WADE,

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

Respondent.

Case No.: CV 2012-3744

**PETITIONER'S RESPONSE TO
RESPONDENT'S MOTION TO
ALTER OR AMEND JUDGMENT**

COMES NOW the Petitioner, Jamee L. Wade (hereinafter "Mr. Wade", "Mr. Jamee Wade" or "Jamee") by and through his attorney of record, Ronaldo A. Coulter, and files his Response to the June 12, 2012, Respondent's Motion to Alter or Amend Judgment.

**I
PROCEDURAL AND FACTUAL BACKGROUND**

On December 22, 2011, Mr. Wade was shot twice and injured by a city of Fruitland Police Officer. Shortly thereafter, Mr. Wade retained counsel. Aware that an investigation into the shooting had immediately begun, and being aware that Mr. Wade had to file a tort claim on

or before June 19, 2012, Mr. Wade, through counsel allowed eighty-two (82) days to pass prior to seeking information which would allow him to timely submit a comprehensive claim Per I.C. § 6-906 of the Idaho Tort Claims Act (ITCA). On March 22, 2012, per I.C. §§ 9-337 through 9-347, Mr. Wade, through counsel, requested copies of the completed Idaho State Police, Fruitland Police Department, and Payette County Sheriff's Department investigations into the officer involved shooting of Mr. Jamee Wade. On March 30, 2012, the Respondent denied Mr. Wade's request relying on I.C. § 9-335 without addressing the rationale for the decision. On April 19, 2012, Mr. Wade, per I.C. § 9-343(1), filed a Petition for Access to Public Records and requested an expedited hearing. On April 27, 2012, the Respondent filed an Answer to Mr. Wade's Petition. A brief hearing was held in Court on May 4, 2012, which hearing was continued until May 17, 2012. At the May 17, 2012, hearing, the Court concluded that it would be necessary for it to review the records contained in the Respondent's file *in camera*. On June 5, 2012, the Court having completed its *in camera* review, issued its Memorandum Decision on Petition for Access to Public Records granting Mr. Wade's request and ordering the Respondent to make the record public and provide the same to Mr. Jamee Wade. On June 6, 2012, Respondent submitted its Motion to Alter or Amend Judgment, which contained as exhibits, the June 6, 2012, affidavits of Mr. Christopher N. Topmiller, Chief Criminal Deputy in the Canyon County Prosecuting Office, Mr. Gary Deulen, Chief Deputy in the Canyon County Sheriff's Office and Mr. William Crawford, Lead Investigator in the Canyon County Prosecuting Attorney's Office. Upon the realization that he would not receive the requested documents prior to June 19, 2012, Petitioner filed a skeleton tort claim with the city of Fruitland, Idaho on June 8, 2012.¹ On June 12, 2012,

¹ It is important to note that ¶ 26 of the June 8, 2012, tort claim filed by Mr. Jamee Wade reads in pertinent part as follows:

Upon information and belief, this claim meets the minimum requirements of I.C. § 6-907. However, the Canyon County Prosecutor's Office has fought and continues to fight Mr. Jamee Wade's access to information maintained

the Respondent filed its Memorandum in Support of Motion to Alter or Amend Judgment (Respondent's Memorandum) wherein Respondent included in its "Factual & Procedural Background" section what it termed as its "generalized synopsis" based on "current reports and investigation".² On June 13, 2012, Respondent filed a Motion to Stay the Proceedings Pending Decision on Motion to Alter or Amend Judgment. On June 14, 2012, the Court issued its Order to Stay Proceeding Pending Decision on Motion to Alter or Amend Judgment. On June 15, 2012, the Court issued a Notice of Hearing, which set June 28, 2012, at 10:00 a.m. as the time the Court would hear oral argument on Respondent's Motion to Alter or Amend Judgment. The present Petitioner's Response to Respondent's Motion to Alter or Amend Judgment is being timely submitted per I.R.C.P. 7(b)(3)(E).

II APPLICABLE LAW AND STANDARD OF REVIEW

I.R.C.P. 59(e) allows a motion to alter or amend a judgment to be brought within fourteen (14) days after the entry of the judgment. Where a party can request a review of a Court's memorandum decision and order, the petition will be treated as a motion to alter or amend a

by the Canyon County Prosecutor's Office notwithstanding the order issued by the court in this matter on June 5, 2012.

² According to the Canyon County Prosecuting Attorney's generalized synopsis, the following are the relevant events of the December 22, 2011, shooting of Mr. Wade by a Fruitland Police Officer:

On December 22, 2011, the Idaho State Police (ISP) received a call regarding an officer involved shooting in New Plymouth, Idaho. The Fruitland police officer involved in the shooting had responded to a call of an intoxicated person making threats to kill his mother. Upon arrival, the Officer observed a white male (Mr. Wade) step out of a sports utility vehicle parked in the driveway and begin walking toward the officer's patrol car in an "aggressive and determined manner." The officer ordered the suspect to stop without success. The officer then ordered him to stop or "he would shoot." The suspect continued toward the officer stating "fucking do it then." The officer fired two rounds at the suspect, the suspect then grasped his chest and moaned before stumbling to the ground. The officer ordered the suspect to stay on the ground, to which the suspect responded "fuck you" and got to his feet. The officer then began to back pedal away from his patrol car in an attempt to create some distance and continued to give the suspect commands to remain on the ground. The suspect refused to comply and continued to pursue the officer, at this point the officer fired three additional rounds and the suspect fell to the ground. A second officer arrived on scene and the two officers secured the suspect and called emergency medical services.

judgment. *Obray v. Mitchell*, 98 Idaho 533, 538 (1977). In reviewing an I.R.C.P. 59(e) motion, the Court must weigh the evidence as it existed as in the first instance. Therefore, a trial court is precluded from considering new evidence when asked to reconsider a final judgment pursuant to a motion to alter or amend the judgment under Rule 59(e). *PHH Mortg. Services Corp. v. Pereira*, 146 Idaho 631, 635-636 (2009) citing *Coeur d'Alene Mining Co. v. First Nat. Bank of North Idaho*, 118 Idaho 812, 823 (1990).³ An I.R.C.P. 59(e) motion to alter or amend a judgment is “addressed to the discretion of the court”. *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (Idaho, 2008).

III ARGUMENT

a. Separation of Powers – The District Court Acted Within Constitutional Bounds In Granting the Petitioner’s Public Writings Request

As stated in the Respondent’s Memorandum, Article II Section 1 of the Idaho Constitution provides for the separation of powers among the legislative, executive, and judicial branches of Idaho government. Additionally, the Petitioner agrees that the Idaho Legislature has the power to make laws, the Executive Branch of Idaho government has the power to enforce the law while the Judiciary is tasked with the power to interpret the laws passed by the legislature. While the Respondent goes to great length educating the Court on Respondent’s view on the proper role of the judiciary as well as the judiciary’s primary responsibilities, the lecture was not only inappropriate, it was also frivolous, arrogant, and unnecessary.

³ A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. An order denying a motion made under Rule 59(e) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion. Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. *Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based.* (Emphasis added)

Coeur d'Alene Mining Co. v. First Nat. Bank of North Idaho, 118 Idaho 812, 823 (1990).

In enacting Title 9 Chapter 3 of the Idaho Code, the legislature, exercising its role to make laws for the people of Idaho, established Idaho's Public Writings Law. The legislature through I.C. § 9-338, provided Idaho Citizens the right to examine and take a copy of such records unless access to such records are expressly prohibited by statute. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 461, 915 P.2d 21, 23 (Idaho, 1996). As a citizen of Idaho, Petitioner, Mr. Jamee Wade, endeavored to obtain public records that were/are in the custody and control of the Respondent. The Respondent, exercising its judgment, refused to provide the records requested by Petitioner. Once Petitioner's request for Public Records was denied by the Respondent, Petitioner sought relief through I.C. § 9-343 - the only mechanism remaining provided by the legislature. I.C. § 9-343 reads in pertinent part as follows:

The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency or independent public body corporate and politic. In cases in which the records requested are claimed as exempt pursuant to section 9-340D(1) or (24), Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing. (Emphasis added)

The District Court, in compliance with the will of the Idaho Legislature and doing so within the powers it exercises under the Idaho Constitution, granted a hearing, reviewed the subject records *in camera* and rendered its decision and order. Therefore, the Court clearly did not exceed the power provided in the Idaho Constitution by performing its role designated by I.C. § 9-343 and by performing its constitutional duty of interpreting the law.

- b. The Court's Ruling Does Not Interfere With Respondent's Enforcement Proceedings, Interfere With the Ability of either the Petitioner or the Involved Officer's Ability to Obtain a Fair Trial, nor Constitute an Unwarranted Invasion of Personal Privacy nor Interfere Respondent's Charging Authority.

1. The Respondent's Argument Under I.C. § 9-335(1)(a) is Flawed in Light of the Plain Language of the Statute.

The Respondent argues, without citation to any authority, that disclosing the requested documents as ordered by the Court to Petitioner and Petitioner's counsel "*might* interfere" with the Respondent's enforcement proceedings. Respondent argues in part that the "premature disclosure of police reports, forensics, photos of the scene, officer's observations, and medical records *all have the potential to affect the outcome of criminal proceedings.*" (Emphasis added) I.C. § 9-335(1)(a) reads as follows:

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records *would*:

(a) Interfere with enforcement proceedings; (emphasis added)

In the hearing before the Court, the Respondent provided examples of how the disclosure of the requested documents might interfere with Respondent's enforcement proceedings. However, the Court in concluding that the Respondent had not met the statutory test wrote the following:

The only argument presented by the State to support such a finding is that disclosure would *possibly* taint the testimony of the Petitioner in a grand jury proceeding or preliminary hearing. This disregards that Petitioner's statements about the incident have been preserved by recorded interviews of him taken January 12, 2012. Further, it assumes that he might perjure himself in order to improve the value of his tort claim. The language of the statute does not state that the records are exempt from disclosure if production *might possibly* interfere with enforcement proceedings. The statute requires that interference would result. This Court cannot make that finding. (Emphasis in original text)

Applying the plain meaning of the words contained in I.C. § 9-335(1)(a), the Court was bound by law to render the decision that it made.

2. The Respondent's Argument Under I.C. § 9-335(1)(b) and I.C. § 9-335(1)(c) is Without Merit and the Argument is Compromised by Respondent's Actions

The Respondent argues that by disclosing the requested documents as ordered by the Court to Petitioner and Petitioner's counsel, that either the officer's and or the Petitioner's right to a fair adjudication would be jeopardized. However, in support of this argument, the Respondent failed to cite to any authority or present any facts to substantiate its position. Indeed, this argument rings hollow and disingenuous in light of the action taken by Respondent in pursuing its Motion to Alter or Amend Judgment.

Respondent must be aware that a filing in either State or Federal Court, unless sealed, is accessible to anyone to include the media or other interested parties. Yet, as documented in footnote 2 herein, Respondent, in what is described as a "generalized synopsis" based on "current reports and investigation", concludes that the Petitioner's actions justified the use of deadly force upon the Petitioner by the then unnamed Fruitland Police Officer. Unfortunately, Mr. Jamee Wade was the subject of an online news article published on June 14, 2012, by the Idaho Statesman.⁴ In this article, the heretofore-unnamed officer was identified as Bill Copeland. Further, from the information provided by the Chief of Police, Fruitland Police Department, the article states "Huff said the initial information indicates Copeland followed department policy during the confrontation." Given the statement made by Respondent in Respondent's Memorandum and the statements made by the Chief of Police, Fruitland Police Department, it

⁴ <http://www.idahostatesman.com/2012/06/14/2154937/man-shot-by-fruitland-police-in.html>. See also (Exhibit "A").

would be hard not to conclude that these combined statements/actions have interfered with Mr. Jamee Wade's right to a fair and impartial adjudication of his administrative and possible future state or federal civil claims, as well as the impartial defense of any criminal charges, if brought against Mr. Wade, as a result of the shooting. The Respondent has taken the position that the Court's decision to release the documents requested by the Petitioner "has in essence taken away the Prosecuting Attorneys, constitutional and statutory duty to provide a fair and impartial trial to all parties." This position is meritless and indeed frivolous. The Respondent's public disclosure of the facts surrounding the shooting and subsequent leak to the press of the name of the officer who discharged his weapon have interfered with Mr. Jamee Wade's ability to receive a fair and impartial hearing. The only unwarranted invasion of Mr. Jamee Wade's privacy has come by the actions of Respondent. The only unwarranted invasion of privacy of the now identified Fruitland City Police Officer, Bill Copeland, has now come at the combined hands of the Respondent and the Chief of Police of the city of Fruitland. Given Respondent's disclosure, its bid to keep the records non-public is also moot.

Compliance with the Court's June 5, 2012, Memorandum Decision and Order, may provide the Petitioner with the information to adequately put forth his position based on the information contained in the completed investigations of the Idaho State Police, the Fruitland Police Department, and the Payette County Sheriff's office. Through obtaining the documents ordered by the Court, Mr. Jamee Wade may be able to mitigate the damage inflicted upon him by the Respondent.

c. Neither a Court Ruling nor Ultimate Decision Placed a Timeframe on the Charging Decision of the Prosecutor

In Respondent's Memorandum, the Respondent asserts that the Court has overstepped and gone "beyond its purview and duties." During the May 4, 2012, hearing, the Court did not

order, insinuate, or say to the Respondent that it was giving Respondent two weeks to make a charging decision. Indeed, the Court provided the Respondent a thirteen (13) day period (May 13, 2012 – May 17, 2012) in which to review the files to ascertain which documents could be released to the Petitioner. On May 17, 2012, when the Respondent maintained it was not required to nor was Respondent inclined to provide Mr. Wade with any documents the Court made the decision to review the Respondent's records *in camera*. Upon completion of that review, the Court issued its June 5, 2012, Memorandum Decision. Nowhere in the Memorandum Decision did the Court state, nor in any way indicate that the Respondent was or had been limited to two (2) weeks from any defined time period to make a final charging decision. Indeed, a close review of the Memorandum Decision finds that the word "two" was only used one time in relation to the binders containing the Petitioner's medical records and the words "week" or "weeks" do not appear in the Memorandum Decision. Contrary to the assertion made by Respondent, the Court in no way tried to force the Respondent to make a quick charging decision. Therefore, the Court did not "encroach upon the constitutionally mandated authority" of the Respondent as alleged in Respondent's Memorandum. The Respondent's position has no basis in fact or existing law.

d. The Court Has Made No Determination Whom the Respondent Could Charge

As noted by the Respondent and herein, on May 17, 2012, when the Respondent, maintained it was not required to nor was Respondent inclined to provide Mr. Wade with any documents, the Court made the decision to review the Respondent's records *in camera*. Upon completion of that review, the Court issued its June 5, 2012, Memorandum Decision. In that decision, the Court specifically stated the following:

The only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police Officer. Whether either person is charged with a

crime is undecided. Indeed, the State may conclude that the evidence does not support a criminal charge against either party. But in the event a criminal charge is brought, this Court cannot find that disclosure of these documents would deprive either person of a fair trial or an impartial adjudication.

The Court arrived at this opinion based on its *in camera* review and analysis of the record that existed at the time it was provided to the Court by the Respondent. The Court undertook and completed its *in camera* review to consider Mr. Wade's petition and the position taken by Respondent to deny the Petitioner access to the public writings requested by the Petitioner. There is nothing in the Court's language that remotely suggests that the Court restrained the Respondent from charging anyone other than Officer Bill Copeland or Mr. Jamee Wade as Respondent deems appropriate as a result of the December 22, 2011, incident.

e. The Petitioner's Public Writings Request Does Not Bypass Discovery Channels Established by Law in Violation of I.C. § 9-343(3)

As noted herein, on December 22, 2011, Mr. Wade was shot twice and injured by a city of Fruitland Police Officer who has now been identified as Bill Copeland. Because of Officer Copeland's use of deadly force, Mr. Wade has suffered both physically and mentally. Per I.C. § 6-906 of the ITCA, and as a direct result of the Respondent's refusal to provide the public records sought through his petition, Mr. Wade filed a tort claim on June 8, 2012. A stated purpose of the ITCA is to provide notice to the government entity to:

- (1) save needless expense and litigation by providing opportunity for amicable resolution of differences among parties,
- (2) allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the state's liability, if any, and
- (3) allow the state to prepare defenses. *Pounds v. Denison*, 120 Idaho 425, 426-27, 816 P.2d 982, 983-84 (1991).

Driggers v. Grafe, 148 Idaho 295, 297 (Idaho App., 2009).

Mr. Wade has sought and continues to seek information in order to submit and now amend a claim that will provide sufficient notice to the government entity(ies) involved to meet the three objectives of the notice requirement of the ITCA. The Idaho State Police, the Fruitland Police Department, and the Payette County Sheriff's Department have all completed their investigations and these investigations have been submitted to the Canyon County Prosecutor's Office. Mr. Wade initially sought these completed investigations and/or reports because they contain information that would have allowed him to prepare a comprehensive tort claim. These same documents will now allow Mr. Wade to amend the present anemic tort claim filed on June 8, 2012, with the city of Fruitland.⁵ The documents ordered by the Court to be produced will allow Mr. Wade, through the amendment of his present tort claim, to timely present a comprehensive claim to the city of Fruitland for the city's consideration.

The Idaho Tort Claims Act does not provide for a hearing in which a party can be compelled to produce documents to support a claimant's position or otherwise inform the claimant of facts that may weaken the claim. In short, the ITCA does not provide a discovery mechanism. As noted by the Court, compliance with the ITCA is a condition precedent to filing a lawsuit. I.C. § 9-343(3) reads in pertinent part as follows:

Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding. (Emphasis added)

⁵ See fn. 1 herein.

By law, Mr. Wade may not bring a civil suit against an Idaho political entity for a tort, without first filing a tort claim. Therefore, the only avenue available to Mr. Wade to bring or amend an existing tort claim with sufficient information currently held by the Respondent is to seek the information under the Idaho Public Writings Act. Mr. Wade's request is in no way an attempt to supplement, augment, substitute, or supplant discovery procedures in a civil or administrative proceeding. Thus, Mr. Wade's petition falls squarely within the permissible scope of the Idaho Public Records Act. Respondent's denial is not supported by I.C. § 9-343(3). Indeed, Respondent's current position contesting the Court's order with frivolous and meritless arguments will unnecessarily cause delay and needlessly increase the cost of litigation. The Petitioner is therefore entitled to examine and make a copy of the requested records.

f. The Respondent Submitted Evidence that the Court Cannot Consider in Deciding Respondent's I.R.C.P. 59(e) Motion to Alter or Amend Judgment

Respondent submitted its Motion to Alter or Amend Judgment, which contained as exhibits, the June 6, 2012, affidavits of Mr. Christopher N. Topmiller, Chief Criminal Deputy in the Canyon County Prosecuting Office, Mr. Gary Deulen, Chief Deputy in the Canyon County Sheriff's Office and Mr. William Crawford, Lead Investigator in the Canyon County Prosecuting Attorney's Office. These affidavits did not exist at the time the Court made its decision and by law cannot now be considered in Respondent's I.R.C.P. 59(e) motion. These affidavits were knowingly and improperly included in an effort to convince the Court that the Court had overlooked previous evidence and should now consider additional evidence of Respondent's on-going investigative efforts. However:

While Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." 12 James Wm. Moore et al., Moore's Federal Practice § 59.30[4] (3d ed.2000). Indeed, "a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with

newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Kona*, 229 F.3d at 890 (citations omitted). *A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation. Id.*

Carroll v. Nakatani, 342 F.3d 934, 945 (C.A.9 (Hawai’i), 2003)(emphasis added)⁶

The affidavits speak for themselves in revealing that the information contained in the affidavits was available to the Respondent to present for the Court’s consideration on different occasions prior to Respondent’s filing its present Rule 59(e) motion and prior to the Court’s June 5, 2012, decision. A Rule 59(e) motion by necessity may only consider “the status of the case as it existed when the court rendered the decision upon which the judgment is based.” *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (Idaho, 2008), *Coeur d’Alene Mining Co. v. First Nat. Bank of North Idaho*, 118 Idaho 812, 823 (Idaho, 1990). Therefore, all evidence presented in the Respondent’s present motion that was known and or reasonably should have been raised prior to the Court’s June 5, 2012, decision was improperly placed before the court. As a matter of law, the Court cannot consider such evidence in the present motion brought by Respondent.

IV CONCLUSION

A Rule 59(e) motion rests with the discretion of the Court. For the reasons stated herein, Petitioner asks that the Court deny the Respondent’s Motion to Alter or Amend the Court’s Judgment of June 5, 2012.

⁶ See also *Arregui v. Gallegos-Main*, 2012 WL 1557284, 15 (Idaho) decided May 4, 2012 and has not yet been released for publication.

DATED this 19th day of June, 2012.

CAMACHO MENDOZA COULTER LAW GROUP



R.A. (RON) COULTER
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of June, 2012, I caused to be served a true and correct copy of the foregoing by the following method to:

BRIAN TAYLOR
MICHAEL PORTER
COUNTY PROSECUTING ATTORNEY
1115 ALBANY STREET
CALDWELL, ID 83605

() U.S. Mail
(x) Hand Delivery
() Certified Mail, Return Receipt
 Requested
() Overnight Mail
() Facsimile: 208-455-5955
() Email:

CAMACHO MENDOZA COULTER LAW GROUP



By: R.A. (RON) COULTER

Idahostatesman.com

Man shot by Fruitland Police in December arrested for felony DUI in Boise Thursday

Published: June 14, 2012



Jamee Lee Wade

By Patrick Orr — porr@idahostatesman.com

While prosecutors have yet to charge Jamee Lee Wade in connection with an incident in December when he was shot by a Fruitland Police officer, Wade is now being held in the Ada County Jail on his second felony DUI arrest in Ada County since February.

Boise police arrested the 38-year-old Wade after investigating a report of a possible drunk driver near Fort and 14th streets late Wednesday. A police officer saw Wade drive through a red light at 13th and Fort streets before pulling him over. Police detected a strong odor of alcohol coming from Wade and say

Case
CV 2012-3744
Jamee L. Wade v. Bryan
F. Taylor

**Exhibit
A**

he failed several field sobriety tests before being taken to the jail, where he took a breath test and registered a .23 blood alcohol content percentage, according to police reports.

The legal bac limit in Idaho is .08. Any bac over .20 is charged as an excessive DUI. When Boise police arrested Wade on a DUI on Feb. 10, his bac was .24, according to reports. Wade eventually pleaded guilty to a felony DUI for the February arrest and is scheduled to be sentenced for that on June 26.

The crime of felony DUI is punishable by up to 10 years in prison.

Wade has a lengthy misdemeanor criminal history in Idaho, including the officer-involved shooting, three DUIs, and several traffic infractions, according to court records.

Fruitland Police Chief J.D. Huff told the Idaho Statesman in December that Wade would be charged with a crime in connection with a Dec. 23 incident when he was shot by an officer investigating a domestic disturbance call by Wade's mother's house.

Wade was badly injured in the shooting and was listed in critical condition in the days following but has since recovered.

The Idaho State Police, who headed the task force investigating the shooting, completed their investigation in February, Payette County Prosecutor Ann Marie Kelso said. Canyon County Prosecutor Bryan Taylor said Thursday his attorneys, who are reviewing that report for Payette County, are still working on the case.

Not much information has been released about what happened during the confrontation. Police aren't saying whether Wade was armed, where the shooting occurred or how many times Wade was shot.

Police do say the Fruitland officer was sent to a home on Northwest 2nd Avenue just after 8 p.m. Dec. 23 after getting a 911 phone call from someone who said Wade was threatening to kill her. Huff said that the caller was Wade's mother.

The officer who shot Wade, Bill Copeland, had been with the Fruitland Police Department for eight months and worked as a Weiser police officer before that. Huff said initial information indicates Copeland followed department policy during the confrontation.

[Back to Top](#)

The decision to alter or amend is discretionary with the Court. *Slaathuug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999). No one disputes that I.C. § 9-335 is the operative statute in this case. Although the Court discussed the subject of whether this investigation was active vs. inactive in its original Memorandum Decision, this distinction was not particularly important to this Court's decision. If the State wishes to characterize it as an active and ongoing investigation, so be it.

The important consideration for this Court and for deciding the issue of whether certain records are exempt from disclosure is the analysis of subsection (1) of I.C. § 9-335. Therein it clearly states that records of a law enforcement agency are exempt from disclosure only under certain circumstances as set forth in subsections (a) through (f) of the 9-335(1). In its Memorandum Decision filed June 5, 2012, the Court found as follows:

The only provisions that the State claims are possibly applicable are (a) and (b). Thus, in order for this Court to find that the investigation file possessed by the Canyon County Prosecuting Attorney is exempt from disclosure, it must find that disclosure will interfere with enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudicatory hearing.

The only argument presented by the State to support such a finding is that disclosure would *possibly* taint the testimony of the Petitioner in a grand jury proceeding or preliminary hearing. This disregards that Petitioner's statements about the incident have been preserved by recorded interviews of him taken January 12, 2012. Further, it assumes that he might perjure himself in order to improve the value of his tort claim. The language of the statute does not state that the records are exempt from disclosure if production *might possibly* interfere with enforcement proceedings. The statute requires that interference would result. This Court cannot make that finding.

The only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police Officer. Whether either person is charged with a crime is undecided. Indeed, the State may conclude that the evidence does not support a criminal charge against either party. But in the event a criminal charge is brought, this Court cannot find that disclosure of these documents would deprive either person of a fair trial or an impartial adjudication.

In the analysis set forth above, the Court was attempting to follow the plain meaning of the statute. “The objective of statutory interpretation is to derive legislative intent.” *Robison v. Bateman-Hall*, 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the words of the statute itself, “the interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 892, 265 P.3d 502, 505 (2011); citing *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). The plain meaning of a statute therefore will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Id.*

It is this Court’s opinion that the statute clearly sets forth a requirement that disclosure of the relevant documents, to be exempt, must interfere with enforcement proceedings and/or deprive a person of a right to a fair trial or an impartial adjudication. The pertinent language of the statute that this Court relies upon is “such exemption from disclosure applies only to the extent that the production of such records *would*: (a) Interfere with enforcement proceedings; (b) Deprive a person of a right to a fair trial or an impartial adjudication” I.C. § 9-335 (a) ***Emphasis added.***

The State now cites subsections (1)(c) and (1)(e). These arguments were not made in opposition to the Petition at the original hearing and thus will not be considered.

In its Memorandum in Support of Motion to Alter or Amend Judgment, the State makes several claims that the Court exceeds its constitutional authority by limiting the time period within which criminal charges may be brought and/or restricts whom may be charged with criminal conduct arising out of this situation. It is difficult to determine how the State reaches that conclusion, but in the interest of clarifying the record, this Court specifically declares that its earlier ruling was not intended to nor does it in any way restrict the time within which charges may be brought. That is decided by the relevant statute of limitations. Nor does the Court intend to restrict whom the State may charge. That is for the probable cause determination of a detached magistrate.

The State further argues that disclosure of these records might also open “the proverbial

floodgates” of media attention. This concern can be handled by restricting the use of the information contained in those records. To that extent, the Court will alter its earlier ruling.

Therefore, it is the conclusion of this Court that there is no basis to alter or amend the Court’s earlier decision requiring the disclosure of the requested records to the Petitioner and his legal counsel. However, disclosure is limited to Petitioner and his legal counsel only.

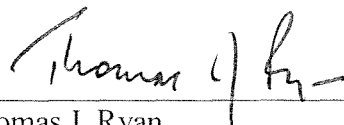
Therefore,

ORDER

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Petition for Access to Public Records filed April 19, 2012 is GRANTED. The Court’s earlier Order is altered as follows:

IT IS FURTHER ORDERED that disclosure of the requested records is limited to disclosure to the Petitioner and his legal counsel and may not be disclosed outside of the pending Tort Claim before Payette County or any subsequent civil litigation that may result from said tort claim.

Dated this 29th day of June, 2012.



Thomas J. Ryan
District Judge


CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

Ronaldo A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

Bryan F. Taylor
Michael K. Porter
Canyon County Prosecuting Attorney
1115 Albany St.
Caldwell, Idaho 83605

6-29-12
Date


Deputy Clerk

BRYAN F. TAYLOR, ISB No.
MICHAEL K. PORTER, ISB No. 7502
CANYON COUNTY PROSECUTING ATTORNEY'S OFFICE
CANYON COUNTY COURTHOUSE
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

F I L E D
A.M. 12:00 P.M.

JUL 11 2012
CANYON COUNTY CLERK
K CANO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE LEE WADE

Plaintiff / Appellee,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY,
CANYON COUNTY PROSECUTING
ATTORNEY'S OFFICE, a public agency;

Defendant / Appellant.

CASE NO.CV2012-3744*C

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENTS, JAMEE LEE WADE AND HIS ATTORNEY OF RECORD RONALDO A. COULTER OF THE CAMOACHO MENDOZA COULTER LAW GROUP, 776 E. RIVERSIDE DRIVE, SUITE 240 EAGLE, IDAHO 83616, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Bryan F. Taylor, County Prosecuting Attorney, Canyon County Prosecuting Attorney's Office (hereinafter "Prosecuting Attorney"), hereby appeals the Memorandum Decision & Order Upon Motion to Alter or Amend Judgment entered by the Court on June 29, 2012, granting Jamee Lee Wade's (hereinafter "Wade") Petition to compel the production of public records, Honorable Thomas J. Ryan, presiding.

NOTICE OF APPEAL
CASE CV12-3744

2. Appellant Prosecuting Attorney has the right to appeal to the Idaho Supreme Court, and the Order described in Paragraph 1 above is appealable under and pursuant to Rule 11 of the Idaho Appellate Rules. *See, e.g., Cowles Pub. Co. v. Kootenai County Bd. Of County Com'rs*, 144 Idaho 259, 261, 159 P.3d 896, 898 (2007); *Idaho Conservation League, Inc. v. Idaho State Dept. of Agriculture*, 143 Idaho 366, 367, 146 P.3d 632, 633 (2006); *Gibson v. Ada County*, 138 Idaho 787l, 789, 69 P.3d 1048, 1050 (2003).

3. Appellant intends to assert a number of issues on appeal including, but not limited to the following:

- a. The Trial Court erred in granting Wade's Petition Pursuant to Idaho Code § 9-335 to Compel Production of Public Records against the Prosecuting Attorney;
- b. The Trial Court erred in ruling that the records requested are public records and not subject to an exemption under § 9-335(1)(a)-(f);
- c. Erred in first ruling that the records requested constituted an inactive investigatory record and upon reconsideration ruling that the distinction between inactive and active investigations was not particularly important;
- d. The Trial Court erred in crafting a remedy not contemplated by the public records act; specifically, amending its order to allow for disclosure to Wade and his counsel Mr. Coulter.

Appellant reserves the right to add additional issues on appeal and to revise or restate the issues set forth above.

4. No order has been entered sealing all or any portion of the record.

5. Appellant requests the reporter's transcript for the following hearings:

- a. Expedited hearing on Access to Public Records held on May 04, 2012;
- b. Expedited hearing on Access to Public Records held on May 17, 2012;
- c. Hearing on Motion to Alter or Amend Judgment on June 28, 2012;

6. Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

- a. Affidavit of Christopher Topmiller in support of Respondent's Answer to Petitioner's Petition for Access to Public Records.
- b. Memorandum Decision on Petition for Access to Public Records filed June 5, 2012;
- c. Memorandum in Support of Motion to Alter or Amend Judgment filed June 12, 2012;
- d. Affidavit of Christopher Topmiller in support of Motion to Alter or Amend Judgment.
- e. Affidavit of William Crawford in support of Motion to Alter or Amend Judgment.
- f. Affidavit of Gary Deulen in support of Motion to Alter or Amend Judgment.
- g. Petitioner's Response to Respondent's motion to Alter or Amend Judgment filed June 19, 2012;
- h. Memorandum Decision & Order Upon Motion to Alter or Amend Judgment filed on June 29, 2012.

7. The undersigned hereby certifies:


- a. That a copy of this notice of appeal has been served on the reporters present at hearing and a transcript has been requested at the address set out below:

Kim Saunders
1115 Albany Street
Caldwell, Idaho 83605

Debbie Kriedler
1115 Albany Street
Caldwell, Idaho 83605

- b. That the Clerk of the District Court has not been paid the estimated fee for preparation of the reporter's transcript per local rule;
- c. That service has been made on all parties required to be served pursuant to Rule 20 I.A.R.

Dated this 11th day of July, 2012.



Michael K. Porter
Deputy Prosecuting Attorney
Canyon County Prosecuting Attorney's Office

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2012, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served on the following in the manner indicated:

Ronaldo A. Coulter
Camacho Mendoza Coulter Law Group
Attorney at Law
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616
Fax: 208-672-6114


☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Delivery
☐ Facsimile
☐ Email

Kim Saunders
1115 Albany Street
Caldwell, Idaho 83605

☐ U.S. Mail
☐ Overnight Delivery
☒ Hand Delivery
☐ Facsimile
☐ Email

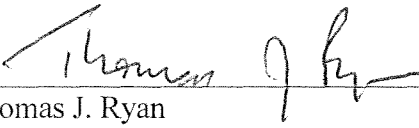
Debbie Kriedler
1115 Albany Street
Caldwell, Idaho 83605

☐ U.S. Mail
☐ Overnight Delivery
☒ Hand Delivery
☐ Facsimile
☐ Email



Michael K. Porter
Deputy Prosecuting Attorney

Dated this 20th day of July, 2012.



Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE


I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

Ronaldo A. Coulter
Camacho Mendoza Coulter Law Group
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

Bryan F. Taylor
Michael K. Porter
Canyon County Prosecuting Attorney
1115 Albany St.
Caldwell, Idaho 83605

7.20.12

Date



Deputy Clerk

OCT 05 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTYIN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,

Petitioner,

vs.

BRYAN F. TAYLOR, COUNTY
PROSECUTING ATTORNEY, CANYON
COUNTY PROSECUTING ATTORNEY'S
OFFICE, a public agency,

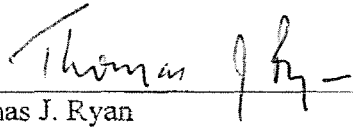
Respondent.

Case No.: CV 2012-3744

RULE 54 (a) JUDGMENT OF
JULY 20, 2012
(AMENDED)

This cause comes before the Court on Petitioner's MOTION TO ALTER OR AMEND
JUDGMENT OF August 6, 2012. UPON DUE CONSIDERATION of and good cause
appearing therefore;

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Court's Rule
54(a) Judgment of July 20, 2012 remains. The Judgment is amended to allow Petitioner, to seek
attorney fees and costs at the conclusion of Supreme Court No. 40142-2012.

DATED THIS 5th day of October, 2012.
Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

10-5-12

BRIAN TAYLOR
MICHAEL PORTER
COUNTY PROSECUTING ATTORNEY
1115 ALBANY STREET
CALDWELL, ID 83605

R.A. (RON) COULTER
CAMACHO MENDOZA COULTER
LAW GROUP
776 E. RIVERSIDE DRIVE, STE 240
EAGLE, ID 83616

TCM

Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,)	
)	
Plaintiff-Respondent,)	Case No. CV-12-03744*C
)	
-vs-)	CERTIFICATE OF EXHIBIT
)	
BRYAN F. TAYLOR, COUNTY)	
PROSECUTING ATTORNEY, CANYON)	
COUNTY PROSECUTING)	
ATTORNEY'S OFFICE, a public agency,)	
)	
Defendants-Respondents,)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Canyon, do hereby certify that the following
is being sent as an exhibit:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 23 day of October, 2012.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By:

J. Randall

Deputy

CERTIFICATE OF EXHIBIT

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,)	
)	
Plaintiff-Respondent,)	Supreme Court No. 40142-2012
)	
-vs-)	CERTIFICATE OF SERVICE
)	
BRYAN F. TAYLOR, COUNTY)	
PROSECUTING ATTORNEY, CANYON)	
COUNTY PROSECUTING)	
ATTORNEY'S OFFICE, a public agency,)	
)	
Defendants-Appellants.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcript to the attorney of record to each party as follows:

Bryan F. Taylor and Michael K. Porter
Ronaldo A. Coulter

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 23 day of October, 2012.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: J. Rondell Deputy

CERTIFICATE OF SERVICE

000115